TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 359.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM A. CLARK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOL. XIII OF TESTIMONY (PAGES 6209 TO 6619, INCLUSIVE).

FILED JULY 26, 1906.

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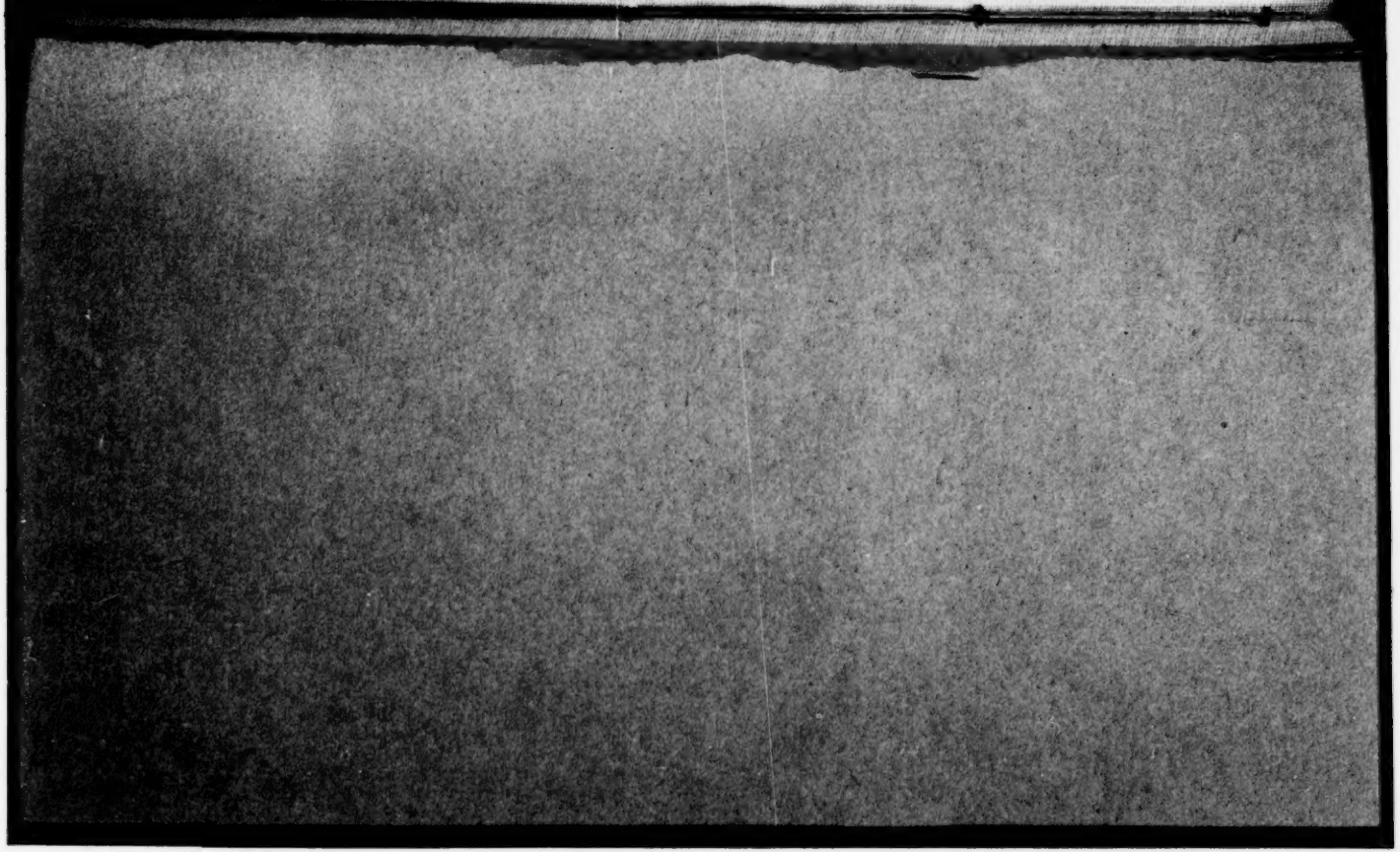

No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. XIII

Pages 6209 to 6619, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of Daisy L. Chattin.)

Q. So all you know about it is what your husband told you?

A. Yes, sir. I signed the deed and that is all I know about it.

Q. Did you get any money yourself?

A. Mr. Chattin—well, I don't know, I think he settled that; I don't think I even had the money.

Q. Do I understand that you don't recollect having received any money at all?

A. No, sir, I didn't receive any money; Mr. Chattin did for me, though.

Q. Do you know how much he got for you?

A. No, sir, I don't know; about one hundred dollars or so; I don't know just what it was. I was sick at the time and had nothing to do with it; Mr. Chattin attended to it all.

Q. And you never heard Mr. Cobban's name mentioned in connection with the matter at all, did you?

A. No, sir. Mr. Chattin read in the paper about it, and that is all I know about it, is what he read.

Q. You say you think that your husband received about one hundred dollars on account of the sale of your land? What do you know about that?

Mr. BICKFORD.—We object, that it is incompetent for the witness to testify concerning any transactions between herself and her husband since the marriage, and further that it is irrelevant and immaterial, and necessarily hearsay.

A. That is all I know about it.

(Testimony of Daisy L. Chattin.)

Q. Did you ever receive any of it yourself at all?

Mr. BICKFORD.—Objected to because it has already been answered, and also because it is leading.

A. No, sir.

Q. In going up with these men that you have spoken of, what were they going there for, if you know?

Mr. WALSH.—Objected to as immaterial.

A. Well, I don't know; they didn't tell me.

Q. You heard nothing from them about that?

A. No, sir.

Q. About the purpose that they had in view and as to whether they proposed to sell it as soon as they could, was not spoken of?

A. No, sir, I didn't know anything about that; they were strangers to me.

Q. Did you have any money of your own at the time, Mrs. Chattin, that would be anywhere near sufficient to pay for this land?

Mr. WALSH.—Objected to as immaterial and irrelevant, and also leading.

A. Well, I don't know; I don't know how much money I had then.

Q. Did you own any land at the time?

Mr. BICKFORD.—The same objection, immaterial and irrelevant, also leading.

Q. Did you have any property of any kind; if so, what was it?

Mr. BICKFORD.—The same objection, immaterial, irrelevant and leading.

(Testimony of Daisy L. Chattin.)

A. No, sir, I had no property.

Q. How were you going to pay for your land?

A. My husband, I suppose, he paid for it.

Q. Did you know of his having any?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

The WITNESS.—Do I have to answer such questions?

Mr. BICKFORD.—You answer them, Mrs. Chattin, we make the objection, and then the answer is taken under the objection.

The EXAMINER.—Yes, you must answer.

A. Why, I don't know; I believe he did. I don't know anything about his affairs. I couldn't say that he had.

Q. Had you heard from any one at all about the fact of your having a chance to sell your land for this hundred dollars?

Mr. BICKFORD.—Objected to as irrelevant and immaterial; also hearsay.

A. Mr. Chattin read it in the paper; he said I could take up a claim.

Q. And get one hundred dollars for it?

Mr. BICKFORD.—We object to that as leading, and as not being the testimony of the witness.

A. I don't know.

Cross-examination waived. Witness excused.

(Testimony of Elizabeth A. Muchmore.)

Subscribed and sworn to before me this —— day of July, 1902. Under the stipulation of the parties, I do hereby certify that I have read and carefully corrected the testimony of the witness, Mrs. Daisy L. Chattin, and the same has been correctly transcribed.

_____,

Standing Master in Chancery and Examiner.

ELIZABETH A. MUCHMORE, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Muchmore, what was your name before your marriage, please.

A. My name was Bray before I was married. I went by the name of Annie Bray, but my right name was Elizabeth Ann Bray.

Q. You made an entry under the Stone and Timber Act, did you not? A. Yes, sir.

Q. You are the wife of Oliver E. Muchmore?

A. Yes, sir.

Q. How long have you been married to him?

A. Five years and over.

Q. What is your present age?

A. I am twenty-seven, going on twenty-eight; I will soon be twenty-eight.

Q. Did you at the time you made this entry, have any property of your own to purchase the land?

(Testimony of Elizabeth A. Muchmore.)

Mr. WALSH.—Objected to as immaterial.

A. No, sir; I had no property.

Q. What arrangements had you made about getting money to pay for the land?

A. We borrowed the money from Mr. Faust.

Q. Did you know anything about that transaction yourself? A. The borrowing of the money?

Q. Yes.

A. I knew about it; I knew that my husband was going to borrow it for me, yes, sir; and it was made out in a separate check to me; Mr. Faust gave me a separate check from his.

Q. How much was that check?

A. I think it was four hundred dollars. It was folded, though, when given to me, and I never opened it and looked at it, but I think it was four hundred dollars.

Q. Who did you come to Helena with?

A. I came with my husband and two nephews.

Q. Your husband had a check for twelve hundred dollars to pay for the two nephews' and his own entry, did he not?

Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial, and not a matter that is presumably within the knowledge of the witness.

A. I think that he had; yes, sir.

Q. You saw the check yourself, did you not?

Mr. BICKFORD.—We object to that for the reason

(Testimony of Elizabeth A. Muchmore.)

that the check itself is the best evidence of the facts sought to be shown.

A. I saw the check, but I didn't read it; I didn't read the figures at all; I didn't open the checks.

Q. How do you come to say that it was twelve hundred dollars then?

A. I think I had heard him say so; I couldn't say positively.

Q. So that was sixteen hundred dollars that was obtained from Jakways & Faust?

Mr. BICKFORD.—Objected to because it calls simply for a mathematical computation, and is not competent evidence.

A. Yes, sir.

Q. Had it been talked over between yourself and the nephews and so on about getting this money?

Mr. BICKFORD.—Objected to because it calls for hearsay testimony, and if calling for a conversation with her husband, as incompetent because it is not permissible for the witness to give conversations between herself and husband; also because it is leading.

A. No, sir; we had no conversation whatever.

Q. What induced you to take the trouble of making this entry?

A. I just thought I would like to take up a timber claim.

Q. Had you met Mr. Cobban at this time?

A. No, sir; I had not.

(Testimony of Elizabeth A. Muchmore.)

Q. Did you know of your husband having met him?

A. I think that he had not met him; I would not say that he had.

Q. Were you present at all when the transaction was had between your husband and Jakways & Faust which led up to the getting of this money?

A. No, sir; I was not there.

Q. Who transacted the business?

A. My husband did the business.

Q. When did you first see Mr. Cobban in regard to this matter?

A. I didn't see Mr. Cobban myself at all.

Q. When did you first find out that you were going to convey to him?

A. I didn't find out that I was going to convey to him until after it was sold to him. My husband did the business.

Q. It couldn't be sold to him until you signed your name to it, could it?

A. No, sir; not until I signed my name, but Mr. Muchmore had made arrangements with him to sell it, and he had asked me if I was willing to sell it, and I said yes, and he made arrangements to sell it, and I signed the deeds, but I had no transactions with Mr. Cobban.

Q. You never saw him?

A. I have seen him, but I am not personally acquainted with him and never had any conversation with him. I don't think that I would know him now by sight.

Q. How far was the land from your home?

(Testimony of Elizabeth A. Muchmore.)

A. I couldn't say exactly; it is five or six miles, I suppose, perhaps more or less; I am not positive.

Q. Who went with you at the time you took it up?

A. My husband went with me.

Q. How many times did you go?

A. I think I was on it twice.

Q. When?

A. I don't know when. I was on it before I filed, I know, but I don't know the date.

Q. For what purpose did you go on there after you filed?

A. Just went on it to look over it.

Q. Did you receive any money yourself for your land?

A. Yes, sir; I received the money.

Q. Who did you receive it from?

A. My husband got it when he sold it to Mr. Cobban, and he gave it to me.

Q. How much did he give you?

A. I think it was six hundred dollars in all; I am not certain how much it was now, for I didn't give the matter much attention at the time.

Q. Why didn't you give it attention?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. Well, I didn't think that I needed to give it any special attention.

Q. Wasn't the matter of taking up this land and selling it for this amount a matter that called for some attention on your part?

(Testimony of Elizabeth A. Muchmore.)

A. Yes, I suppose it did, but I didn't think I was doing anything wrong or anything of that kind; I thought it was like any other transaction; it was ours, we had proved up on it; it was mine, I had proved up on it. I thought it was the same as any other transaction.

Q. When you sold it you didn't know to whom you were selling it, as I understand?

A. Well, yes; I knew who I was selling to; I knew who it was sold to. I didn't know the man personally myself, but I knew who it was sold to.

Q. And had nothing to do with any of the details of the transaction which led up to the sale?

A. No, sir; I had nothing to do with that.

Q. When did you first find out that you were to sell it?

A. I told you that I gave my consent to sell my claim, and it was Mr. Muchmore that transacted the business.

Q. But this deed by which you sold the land bears date the 8th of September, 1899, and the acknowledgment was on the 9th. Now, with reference to these dates, when did you first learn that you were to sell the land?

A. I don't know what days it was.

Q. You don't know how long a time it was before you actually conveyed to Mr. Cobban that you had made up your mind that you would sell to him? A. No, sir.

Q. Do you remember where you were?

A. I hadn't been away from my home after I went to Helena except being up to Mr. Faust's after I proved up; I don't remember being any other place.

(Testimony of Elizabeth A. Muchmore.)

Q. Do you remember conveying the land at Mr. Faust's store in Ovando?

A. Yes, sir; I was there and signed the deed myself.

Q. That was all you had to do, was to go there and sign your name?

A. Yes; that was all the business I had transacted, was just the signing of the deed.

Q. And there was not any money paid to you by Mr. Faust in person, was there, at the time you signed the deed?

A. Yes, sir. We went there and paid back Mr. Faust the money that we had borrowed from him, and he gave me a check for the remaining money in my own name.

Q. How much was that check?

A. I don't remember how much that was now; it seems to me it was forty some odd dollars or something like that, because we owed Mr. Faust some other money, too, and we paid it all up, and I don't remember how much it was, but I received a check for the remainder myself in my own name when I was there and signed the deed.

Q. But you are unable to state as to when you first learned that you were to do what you really in fact did?

A. I don't remember about that.

Q. Had you any fixed purpose in your mind at the time that you went on the land?

A. No, sir; I just wanted to take up a claim, and just took it up for my own property, for my own benefit.

Q. And nothing had been said whatever in the neigh-

(Testimony of Elizabeth A. Muchmore.)

borhood by anybody, that came to your attention, about the fact of an opportunity being presented to immediately convey after you had proved up?

Mr. BICKFORD.—Objected to as incompetent and hearsay, and leading.

A. No, sir.

Q. You hadn't heard that from any source?

Mr. BICKFORD.—The same objection, hearsay and leading.

A. No, sir.

Q. You didn't know as a matter of fact whether you were to keep it a day after you had made your final proofs or keep it forever, then? A. No, sir.

Cross-examination waived. Witness excused.

Subscribed and sworn to before me this —— day of July, 1902.

Under the stipulation of the parties, I do hereby certify that I have read and carefully corrected the testimony of the witness, Mrs. Elizabeth A. Muchmore, and the same has been correctly transcribed.

H. N. BLAKE,

Standing Master in Chancery and Examiner.

MARTHA M. J. DONEY, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Doney, how old are you, please?

A. Forty-three years old.

Q. How long have you been married to Edward D. Doney? A. Twenty-six years.

Q. How long have you lived at your present home?

A. It will be fourteen years this next October.

Q. Do you remember the circumstance of your taking up a stone and timber claim? A. Yes, sir.

Q. Did you have any property of your own at the time you married Mr. Doney?

Mr. WALSH.—Objected to as immaterial.

A. No; I didn't have any more than most girls have; I just lived at home with my father and mother. They had a ranch in Wisconsin.

Q. How old were you when you were married?

A. Eighteen.

Q. Did you have any estate of your own at the time that you bought this land? A. No, sir.

Q. How did you expect to pay for this government land of one hundred and sixty acres?

A. I didn't take one hundred and sixty acres; it was only eighty acres I took; but my husband got the money for me to pay for it.

(Testimony of Martha M. J. Doney.)

Q. You had nothing whatever to do with the business, as I understand?

A. Well, I don't know; he got the money for me, that is all. He taken a claim, the same as I did.

Q. At the same time?

A. Yes, and proved up on it at the same time.

Q. How did it happen that you didn't take the full one hundred and sixty acres?

A. Because it wasn't any good.

Q. Who said it wasn't any good?

A. The timber was chopped off, and it didn't amount to anything.

Q. Did your original location call for one hundred and sixty acres? A. Yes, sir.

Q. How long was it after you filed on it that you found that the timber was no good on half of it?

A. I knew it before I taken it.

Q. What did you take it up for, then?

A. I didn't want only the half of it; I didn't prove up on only the half of it.

Q. At the beginning?

A. At the beginning, yes, sir.

Q. Who informed you of the fact?

A. My husband did.

Q. You knew nothing about it yourself, did you?

A. Well, I went and looked at it.

Q. Do you remember coming here to Helena to file and to make your final proof? A. Yes, sir.

(Testimony of Martha M. J. Doney.)

Q. Who were your witnesses?

A. Mr. Faust and Mr. Dixon.

Q. Do you know the members of the firm of Jakways & Faust? A. Yes, sir.

Q. Do you know how they happened to be your witnesses?

A. I don't know, only that they were my witnesses, that is all.

Q. Do you remember how long it was after you came here to Helena and made your final proof that you conveyed the land?

A. Not exactly; something less than a month.

Q. What do you recall about it, Mrs. Doney, about the fact?

A. Well, I recall that we sold it, that is all.

Q. Did your husband go with you?

A. He came here to Helena with me.

Q. And you both filed at the same time?

A. At the same time.

Q. And both sold at the same time?

A. Yes, sir.

Q. Where were you when you sold?

A. We were at home.

Q. Who was the officer, do you remember?

A. I don't remember any more than we sold to Mr. Cobban; that is all that I remember about it.

Q. I mean before whom did you make your acknowledgment and sign the deed?

(Testimony of Martha M. J. Doney.)

Mr. BICKFORD.—We object. The deed itself, and the certificate of acknowledgment is the best evidence of the fact sought to be shown by the witness.

A. Before Mr. Faust.

Q. And wasn't it at his store that you signed the deed?

A. No, sir, it was in my own house.

Q. You think it was a month after you made your final proofs in the case?

A. Well, it was something less than a month.

Q. How much less?

A. Well, it might have been three weeks, and not any more, anyway; I don't remember.

Q. You think it was about three weeks after?

A. I think that is what it was; I don't remember exactly the date.

Q. Did you know anything about the transactions which led up to your selling the land; did you have anything to do with them yourself?

A. Well, I knew that I would sell if I could, but I didn't know who we would sell to at the time we taken it up, or anything.

Q. How did you come to sell to Mr. Cobban?

A. Well, because he gave us the most for it; we had our homestead and this timber all together.

Q. Had you seen him yourself?

A. No, sir, I never seen Mr. Cobban in my life.

Q. And what you know about it, then, is what somebody else has told you?

(Testimony of Martha M. J. Doney.)

A. Well, I know when I sold the land, that is all—the timber.

Q. Who was present besides Mr. Faust at your house? A. My husband.

Q. Anybody else? A. No, sir.

Q. How much money did Mr. Faust pay you?

A. Well, we sold our timber all together, and we used the money together just as we wanted it.

Q. Did Mr. Faust give you any money at all at the time? A. Yes, if I wanted it.

Q. Did you want it?

A. Well, he give us a check for twelve hundred dollars, and we left it right at his store and drawed it whenever we wanted. We always left our money at his store and drawed it whenever we wanted it.

Q. So he didn't give you any money?

A. No; it was all sold together.

Q. What do I understand as you saying, that he gave you a check for twelve hundred dollars; what do you mean by that?

A. Well, we did have a check for twelve hundred dollars for all our timber, homestead and all.

Q. The timber on the two claims and on the homestead? A. Yes, sir.

Q. Do you know just what a check means?

A. Well, I know a check means the money that we were to get for it and draw it whenever we wanted it.

Q. He was to give you a credit?

(Testimony of Martha M. J. Doney.)

A. No, sir, the money was left there for us, and drawn whenever we wanted it.

Q. The money was left where?

A. At Mr. Faust's office.

Q. Then Mr. Faust was at your house when you signed the deed? A. Yes, sir.

Q. And he told you that the money was at his store, twelve hundred dollars, was that it?

Mr. WALSH.—Objected to as leading, and as assuming testimony as having been given by the witness which has not been given.

A. No, I don't know as he told me that.

Q. I ask the fact, if at the time when he was at your house and you signed this deed—if he gave you any money then?

Mr. WALSH.—Objected to as leading.

A. No, sir, he did not.

Q. How did he give you the money?

A. He left it at his store, and I could get it whenever I wanted it.

Q. You could draw it whenever you wanted it?

A. Yes, sir.

Q. Did you draw it?

A. Whenever I wanted any of it, I drawed it.

Q. Have you any recollection now of having drawn any?

A. I guess I did, if I wanted to use any.

Q. Can you tell me just when you drew any?

(Testimony of Martha M. J. Doney.)

A. No, sir, I cannot.

Q. Can you tell me any amounts that you drew at any time? A. No.

Q. As a matter of fact, Mrs. Doney, if there was twelve hundred dollars left at the store there for you to draw on it at any time whenever you wanted it, how does it happen that now, that two or three years have elapsed you are unable to state when you drew any or any specific amount?

A. Well, because anybody don't generally mark down every day he goes and draws any money if he wants it.

Q. Have you any present recollection of at any time having drawn any amount; if you have, let me know when it is? A. I don't know.

Q. Then, you have no recollection of ever receiving any money yourself?

Mr. BICKFORD.—Objected to as having already been answered by the witness.

A. Yes, I have.

Q. Well, when was that?

A. I don't remember any date.

Q. Nor any amount?

A. No. Whenever I needed it, I got it.

Q. Can you tell how much you have drawn?

A. No, I don't pretend to keep track of what I have drawn; I used it whenever I wanted it.

Q. So you don't know whether you have drawn a hundred dollars or not?

(Testimony of Martha M. J. Doney.)

A. Well, I have drawn all I had there, I guess.

Q. That is, you mean you have drawn the whole twelve hundred dollars? A. Yes, sir.

Q. Can you tell me in what way you drew it?

A. Drew it to support our family, of course.

Q. But you yourself have no recollection of ever having drawn any at all?

A. No, because if I wanted it I would send the children for it, or my husband would get it for me, because I have a big family of my own and I couldn't always go when I wanted anything.

Q. Can you tell me any time or place when the children brought home any amount of money from the store? A. No, sir.

Q. How about the husband; is it the same with the husband?

A. No, I don't remember when he fetched it, but he fetched it whenever he needed it.

Q. Can you remember any time when he brought any specific amount?

A. Oh, I remember times his bringing it when he wanted to use it.

Q. Just tell me one time?

A. Well, I can't; I remember, but I don't remember the date he got it.

Q. Can you remember the amount or anything about it?

A. Well, I don't know as that makes any difference;

(Testimony of Martha M. J. Doney.)

I suppose it was our own, and we could use it whenever we wanted it.

Q. Do you remember anything that was bought with this money?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. It is pretty hard to tell what a family uses, what anybody has to buy with money when they have got it; I don't generally keep track of such things.

Q. You say that you have a large family; how many children have you? A. I have ten children.

Q. All living at home?

A. No, sir, there is two dead.

Q. Eight living?

A. Eight living, and one is married.

Q. And all the rest are at home?

A. Yes, sir.

Q. Have you or your husband any estate except this homestead that you have there?

A. We have some improvements on some railroad land we are living on, and some cattle.

Q. And that is all? A. Yes, sir.

Q. You did not receive the money that was paid into the land office yourself, did you?

A. No, sir, we borrowed the money from Mr. Faust, and he was our witness, and he paid it right there in the land office before us.

Q. You saw that done? A. Yes, sir.

(Testimony of Martha M. J. Doney.)

Q. Well, that would have to be paid back, would it not? A. Yes, sir.

Q. And so what you got, was that included with the twelve hundred dollars?

A. No, sir; the money was returned first, and we had twelve hundred dollars left.

Q. Over and above the purchase price?

A. Yes, sir.

Q. Did Mr. Faust pay your expenses there, too?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. We borrowed money from him, of course.

Q. For that purpose? A. Yes, sir.

Q. Now, really, Mrs. Doney, aside from what has been told you, you don't know much about this twelve hundred dollars, do you?

A. Well, I know that it was ours, and we spent it and used it whenever we wanted it.

Q. And how it was spent or anything about it, you have no personal knowledge?

A. Well, anybody that lives on a ranch, there is lots of things needed, and whatever was needed was bought.

Q. And that would be charged up to you on the books of Jakways & Faust, would it not?

A. Well, that does not matter as long as we paid for it.

Q. You are unable to state from your own knowledge, from any books that have been handed to you or any statements of any kind, that any credit was given

(Testimony of Martha M. J. Doney.)

you at all at any time for more than one hundred dollars, are you?

Mr. BICKFORD.—We object, because the books would be the best evidence of the facts sought to be proven.

(By Mr. WALSH.)

Q. Do you understand the question?

The WITNESS.—I understand the question, but I say we received all our money together, and of course, I don't know exactly how much we did get for those timber claims when we sold our homestead and all together.

Cross-examination waived.

Whereupon, further hearing was adjourned until July 29th, 1902, at 10 A. M.

I hereby certify that I have read the foregoing testimony of the witnesses, Dan McGillis, Jennie Mize, Daisy L. Chattin, Elizabeth A. Muchmore and Martha M. J. Doney, and that the same has been correctly reported and transcribed and that the foregoing transcript is a true and correct statement of the testimony given by the said witnesses.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Tuesday, August 12th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

LINCOLN WORKING, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Working, you are a practicing attorney in this city? A. I am.

Q. Are you a notary public in and for Lewis and Clarke County, Montana? A. Yes, sir.

Q. Were you such officer on or about the 19th of October, 1899?

A. Yes, sir; I think I had been appointed about three years previous to that date, just about.

Q. I show you complainant's Exhibit No. 114; it is a certified copy, which is in evidence in this case, of an original deed of conveyance which seems to have been acknowledged before you.

A. Well, I presume that is correct. It is typewritten, and certified to by the county clerk and recorder.

Mr. BICKFORD.—There is no question propounded Mr. Working.

Q. Have you a present recollection as to the circumstances connected with the acknowledgment of that deed?

Mr. BICKFORD.—That is objected to as irrelevant and immaterial.

A. Well, this particular deed I could not say, be-

(Testimony of Lincoln Working.)

cause I could not say as to the name of the Dodds. If I had the original before me— I have some recollection in relation to a deed acknowledged before me about this date, but the parties of the second part, I don't remember that they were the same as indicated in this deed. I thought the parties of the second part were Cobban and Dinsmore. I have a recollection of a deed of that kind, and Mr. Catlin was in my office with the parties who acknowledged the deed. This, I see, is to R. M. Cobban of Missoula.

Q. What do you recall of the circumstances connected with the acknowledgment of the deed, if anything?

Mr. WALSH.—We object to this, and ask counsel what he expects to prove by this witness.

Mr. MAYNARD.—We expect to show that Mr. Working simply took the acknowledgment of the parties to this deed, and that Mr. Catlin brought them to his office, and that he had nothing whatever to do with the transaction except to take their acknowledgment, and that the deed was prepared and ready for signature and acknowledgment when it was presented to him.

Mr. WALSH.—We object to that because it is not rebuttal. There is no evidence in the record anywhere, from anybody, denying that any such state of facts existed. This is a part of the case of the Government in chief, if it has any materiality at all here, and cannot now be inquired into, for the reason that the time within

(Testimony of Lincoln Working.)

which the Government can put in its evidence in chief has long since gone by.

Q. Please answer the question, Mr. Working.

Mr. WALSH.—One moment. If your Honor please, we want to restrict, if possible, the taking of any further testimony on behalf of the Government in this case in chief, and unless the counsel can point to some testimony in the record as to which this is rebuttal, I don't think that the defendant in this case ought to be compelled to attend the trial of these mattters now. This adjournment was taken simply for the purpose of putting in testimony in rebuttal. I do not know of any testimony at all to which this would be rebuttal.

Mr. MAYNARD.—The direct answer to that is this, that at times it was denied by the defense and at other times the question was left open and they did not know whether it was or not and di not know what the circumstances were connected with this matter. This is for the express purpose of meeting that proposition and having it clearly appear of record that the deeds were prepared when presented to the notary.

Mr. WALSH.—I take it on this acknowledgment by counsel that it is not rebuttal, that there is not any evidence in the record that he can call to the Court's attention, to which it is rebuttal.

Mr. MAYNARD.—I call attention to the record all through, to the evidence of these entrymen in Helena on that question, and therefore it is purely rebuttal.

(Testimony of Lincoln Working.)

Mr. WALSH.—The simple question for the Master now is whether there is any testimony in the record to an effort contrary to the question now addressed to the witness. We submit that there is not.

Mr. MAYNARD.—I say there is time and time again.

Mr. WALSH.—If there is, counsel should call the attention of the Master to it. That is all we ask, if there is any, and if there is not, the Master ought not to require the defendants to sit here and go through the presentation of original testimony now; in fact, there is no jurisdiction for the Master to hear that testimony, I should think.

The MASTER.—The great difficulty under which I labor is that I have no authority to pass upon an objection of this character. It sometimes occurs that, while testimony is not rebuttal, the Court trying the case will nevertheless in its discretion admit it. I think all I can do is to let the witness answer the question and let it go up and be argued and determined by the circuit court.

Mr. WALSH.—I would like to say a word in regard to that, because it may be material hereafter. The suggestion made by the Master is absolutely correct, that it is in the discretion of the Court to allow testimony to be introduced in rebuttal that is really in chief, but the rules of equity forbid that now, because the time for taking testimony in chief on behalf of the complainant has gone by, and the only way to put in testimony in

(Testimony of Lincoln Working.)

chief would be to get the Court to extend the time for the taking of testimony in chief. The jurisdiction to take testimony in chief is really gone.

The MASTER.—Let the witness answer.

A. Well, I recall this: there was two gentlemen and a lady came into my office and one of the gentlemen introduced the lady and the other gentleman to me, and said that they would like to acknowledge a deed, and he also introduced himself. I sat down to my desk to look over the deed. At first I did not catch the name of Mr. Catlin and recognize that it was Mr. Catlin from Missoula. I started to read over the deed, and I think that I took exception to some clause in it and asked him if I had not better insert another word, some conjunctive word or other, and he said no, that the deed was all right. He said: "I prepared the deed myself, and it is all right." I said: "Very well, I will just simply take the acknowledgment."

Mr. BICKFORD.—We move to strike out this last statement of the witness, for the reason that it is a conversation between himself and Mr. Catlin, and is clearly hearsay, and is irrelevant and immaterial, and is not rebuttal.

A. (Continued.) Then Mr. Catlin said to me that this deed was for some land that his firm was buying that was situated in Missoula County, and that he was in the real estate business. Mr. Catlin then handed me a card with the firm name of Cobban & Dinsmore, and

(Testimony of Lincoln Working.)

said that, while his name did not appear on the card as a member of the firm, that he was in fact a member of the firm, and said they had considerable of that business to transact here in Helena and that he would be pleased to call and see me again. We exchanged cards, and I throwed his card in my desk, and I never gave the matter a thought until I happened to find the card here lately, and I identify that card as the same one that he gave me at that time.

Q. Have you that card here?

A. I have it in my pocket.

Q. Will you please produce it.

Mr. BICKFORD.—We move to strike out all the conversation between this witness and John B. Catlin on the ground that it is hearsay, also that it is irrelevant and immaterial and not proper rebuttal.

A. This is the card, and you will notice that on the top there I wrote his name in pencil, because I didn't take notice that it was on the lower corner of the card.

Q. Did you as a matter of fact acknowledge any other deeds of a similar character.

A. That is the only one that I have any recollection of.

Mr. MAYNARD.—I offer that card in evidence and ask that it be marked as an exhibit in the case.

Mr. BICKFORD.—We object to it as not proper rebuttal and as irrelevant and immaterial.

(Testimony of Lincoln Working.)

The MASTER.—This card will be marked Complainant's Exhibit No. 344.

Cross-examination.

(By Mr. WALSH.)

Q. Just one deed of a man and his wife?

A. That is all I have any recollection of, Mr. Walsh.

Redirect Examination.

(By Mr. MAYNARD.)

Q. If it is possible that among these deeds that are offered in evidence there are others that were acknowledged before you, I will call your attention to them later. I am under the impression that there is one more, that I could not find it this morning.

A. At this time that is the only one I have a recollection of, and I am pretty sure it is the only one for which Mr. Catlin was in my office.

LINCOLN WORKING.

Subscribed and sworn before me this 14th day of August, 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

FRANK L. REECE, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Are you a practicing attorney in this city, Mr. Reece?

A. Land and mining attorney, yes, sir.

Q. You may state whether or not on or about the 28th of September, 1899, you were a notary public in and for the county of Lewis & Clarke, Montana.

A. I was, sir.

Q. I show you an exhibit in this case, No. 184, and in connection with that exhibit I ask you if on or about the date therein set forth, you were equainted with R. M. Cobban, of Missoula? A. Yes, sir.

Q. And with Major Catlin?

A. Major Catlin—I don't believe I am; I have seen the gentleman; I am not personally acquainted with him, though.

Q. Do you remember anything about Mr. Cobban in connection with that exhibit? A. Yes, sir.

Q. Will you please state what your recollection is?

Mr. WALSH.—We object to this on the ground that it is immaterial, irrelevant and incompetent, and not proper rebuttal. If it is material at all, it is material only as a part of the Government's case in chief, and the time has long since gone by in which the Government can submit any testimony in chief.

(Testimony of Frank L. Reece.)

A. When these deeds were brought to me, I suggested that below my signature I put in "Notary Public in and for Lewis & Clarke County, State of Montana," and Mr. Cobban took the deeds downstairs somewhere, or Mr. Griswold did, and they came back and told me they were satisfied with it, and so I didn't make any change in it whatever.

Q. You simply took the acknowledgement?

A. That is all, sir.

Q. You say that it was Mr. Griswold or Mr. Cobban—which did you say?

A. Both gentlemen. I met both gentlemen on the same afternoon, sir.

Cross-examination waived.

FRANK L. REECE.

Subscribed and sworn to before me this 16th day of August, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Friday, August 15th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

FRANK L. REECE, recalled for complainant in rebuttal.

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Reece, I show you the testimony that you gave the other day, and I inadvertently failed to show you another exhibit in the case, Exhibit No. 187. This

(Testimony of Frank L. Reece.)

is Exhibit No. 184. I just simply ask you whether the testimony that you gave the other day with reference to the exhibit that I then called your attention to would be the same now with reference to this other exhibit?

A. It would, yes, sir.

FRANK L. REECE.

Subscribed and sworn to before me this 16th day of August, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Mrs. MAY HAWTHORNE, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Hawthorne, where do you live?

Mr. WALSH.—One moment. Before the counsel examines this witness, we desire to inquire what he expects to prove by her?

Mr. MAYNARD.—I expect to treat this case as if Mrs. Hawthorne was sworn at the time of the original case of the complainant. Mrs. Hawthorne was one of the persons named in the bill of complaint as having entered land under the Stone and Timber Act, and having conveyed to Mr. Cobban. She is now called as a witness for the complainant, the same as the other entrymen and entrywomen were called, under the stipu-

(Testimony of Mrs. May Hawthorne.)

lation which appears on page 3551 of the record, which reads as follows:

Mr. WALSH.—Well, it appears there; what is the use of reading it. You have referred to it well enough.

Mr. MAYNARD.—Well, that is right; that point is well taken.

Mr. WALSH.—We understand, then, that counsel desires to examine this lady as being one of the entrywomen named in the bill of complaint, along substantially the same lines that other entrymen and women were examined, as part of the case for the Government in chief.

Mr. MAYNARD.—Yes, Mr. Walsh, and the reason why I did not call Mrs. Hawthorne at the time is because she was not within the jurisdiction of the court, and is an inhabitant, a citizen of Illinois, and under the stipulation I claim the right to her testimony now.

Mr. WALSH.—We object to the examination of this witness and to any testimony along the lines suggested by counsel in his statement, on the ground that the same is not rebuttal, and the time has long since gone by when the Government had any right to take any testimony in chief, and that the stipulation referred to cannot possibly be extended so as to permit the Government at this time to examine this witness, the stipulation giving the Government the right to examine other entrymen and entrywomen only at the close

(Testimony of Mrs. May Hawthorne.)

of the testimony of the defendant. The testimony of the defendant closed a long time ago. The witness, it is true, resides in the State of Illinois, but a provision is made in the law for the taking of her deposition, if the Government desired to take the deposition, and submit the same to the Master or file the same within the time limited by the Government for the taking of this testimony.

The EXAMINER.—I am of the opinion that the witness should be examined in the case, and make the same ruling that I did in the case of the other entrymen and entrywomen who have testified since the case of the defendant was closed.

Q. Where do you reside, Mrs. Hawthorne?

A. Lincoln, Illinois.

Q. When did you return to the State of Montana?

A. This season?

Q. Yes. A. In June.

Q. What time in June?

A. About the 20th or the 23d, along there somewhere.

Q. To what point in the State did you go?

A. It is nine miles from Ovando.

Q. What is the name of the place?

A. That is the postoffice; I was in the country near Ovando.

Q. Who were you staying with?

A. With my brother, Mr. Charles Jakways.

(Testimony of *Mrs. May Hawthorne.*)

Q. Is he a member of the firm of Jakways & Faust?

A. Yes, sir.

Q. When were you here last?

A. Three years ago this summer.

Q. How long were you here?

A. Something over three months.

Q. Do you remember the exact time?

A. From June—possibly the middle of June—till the latter part of September or about the middle of September.

Q. Was that your first visit here?

A. Yes, sir.

Q. For what purpose did you come to Montana at that time?

A. I came to bring my father to visit his sons.

Q. What was his name?

A. My father's name? Rev. L. W. Jakways.

Q. Are you a married woman? A. Yes, sir.

Q. How old are you, please?

A. Forty years old last May.

Q. You may state what property you owned at the time that you visited Montana on the occasion that you have now referred to?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. We owned property in the State of Dakota, that is all.

Q. And your home is in Illinois? A. Yes, sir.

(Testimony of Mrs. May Hawthorne.)

Q. I am now referring to that time, three years ago?

A. Yes, sir.

Q. You owned no property, as I understand you, in Illinois at that time? A. No, sir.

Q. But you did in Dakota? A. Yes, sir.

Q. What did that property consist of?

A. One hundred and sixty acres of land.

Q. A farm? A. Yes, sir.

Q. In whose name was it? A. In mine.

Q. In your own name at that time?

A. Yes, sir, I think so.

Q. State about that in detail, if you please?

Mr. BICKFORD.—Objected to as irrelevant and immaterial, and as asking for nothing.

Q. Had you formerly lived on this one hundred and sixty acres?

A. Never, no, sir; we simply owned it.

Q. You say "we." What do you mean by that?

A. I mean my husband and I. The property, however, is in my name. That was what you wished to know?

Q. Yes. You simply owned one hundred and sixty acres of land in Dakota? A. Yes, sir.

Q. What was that, a homestead or a piece—

A. It was a piece of unimproved land; it could hardly be called a homestead; there was no buildings upon it.

Q. Do you know how you obtained possession of that? A. I certainly do, yes, sir.

(Testimony of Mrs. May Hawthorne.)

Q. How was that?

A. My husband bought it and paid for it.

Q. How much did he pay for it?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I don't know as I can tell you exactly.

Q. Do you know anything about what its value was?

A. Something like a thousand dollars, I presume.

Q. Do you know where it was? A. Yes, sir.

Q. Where is it?

A. It is in Jerrold County. Wessington Springs is the nearest place.

Q. That was the same piece of property that you had at the time? A. Yes, sir.

Q. You took up land under the Stone and Timber Act while you were out here visiting your brother, did you not? A. Yes, sir.

Q. I show you Complainant's Exhibit No. 136, and ask you to look at the same, please, Mrs. Hawthorne. With reference to your coming out here on the occasion of your first visit, when did you first make up your mind to take up this land?

A. Soon after coming here. I knew nothing of it before that.

Q. How long after you came here?

A. Not long; not more than a week or two, I should say, as I remember.

Q. Who called your attention to the matter first?

(Testimony of Mrs. May Hawthorne.)

A. My brother, that such a thing could be done.

Q. Your brother Lewis?

A. No, sir, my brother Charles.

Q. I wish you would state what he said to you at that time?

Mr. BICKFORD.—We object to any conversation between the witness and Charles Jakways for the reason that it is hearsay and is irrelevant and immaterial.

A. The conversation was very limited, and I am sure that the essence of it was this, that that land could be had, that I had a right as a citizen of the United States to file on it or enter upon it, whatever is the proper word, and he considered it a good piece of property, valuable for timber and stone. That was all there was to it, and we—well, I have answered your question.

Q. How did he say that you could secure the land?

A. By going to Helena and entering upon it, visiting it and examining it, and remaining ninety days, making final proof upon it and paying for it.

Q. If, as a matter of fact, the sole piece of property that you had was the one hundred and sixty acres of vacant land in Dakota, please state how you were to pay for it?

A. Well, I borrowed the money to pay for it.

Q. From whom?

A. From the firm of Jakways & Faust.

(Testimony of Mrs. May Hawthorne.)

Q. And what did your brother say, if anything, as to what you could do with the land?

A. Never anything.

Q. After you took it up?

A. No, sir, never anything; that was not decided before I made final proof on it.

Q. Nothing was said about that?

A. No, sir.

Q. Had you any purpose whatever in your own mind as to what you were to do with the land?

Mr. WALSH.—Objected to as immaterial and irrelevant.

A. No, sir, I had not.

Q. What were you to do with the land after you got it?

Mr. BICKFORD.—She has answered the question; we object to the repetition of it.

Mr. WALSH.—And it does not ask for anything, anyway.

A. Well, after I had taken it, as I had a right to do, and made final proof upon it and paid for it, it was mine, was it not, to do with as I saw fit?

Q. Well, I am asking the questions now, Mrs. Hawthorne.

A That is the only way I can answer it. I can put it, not in the form of a question, if you so desire. I supposed that after I had purchased anything and paid for it, it was mine. After that I don't tell my best

(Testimony of Mrs. May Hawthorne.)

friends what I do with my personal property; still, I am perfectly willing to do so.

Q. And you were to get all of the money that was necessary from your brother or from the firm?

Mr. WALSH.—Objected to as leading.

A. Yes, sir.

Q. What arrangement, if any, did you make with them about the money?

A. None whatever, except that he agreed to furnish it to me.

Q. When did you first ascertain the fact that you could get the money in that way?

A. Simply by asking for it. I stated that I had not at my command the purchase price, and my brother said that he would furnish it to me.

Q. Did you have anything more to do with the matter after you filed; did you attend to it in person, or who did you have do the work for you?

A. There was nothing more done, except that I remained here a given length of time, and on my return home I made final proof, after having visited the land again.

Q. How many times did you go to the land?

A. Twice.

Q. Who did you go with?

A. My brother. I guess both of them went one time, my two brothers.

(Testimony of Mrs. May Hawthorne.)

Q. You conveyed this land to Mr. Cobban, it appears? A. Yes, sir.

Q. When did you first form his acquaintance?

A. I never met him.

Q. What do you mean; never met him up to this time?

A. Yes, sir; I should not know Mr. Cobban to-day.

Q. When did you arrive here in the city?

A. Last night at ten o'clock.

Q. Who did you come with?

A. My husband and children.

Q. You have had a conversation with Mr. Walsh or Mr. Bickford previous to going on the stand, have you not?

A. A few moments' conversation with Mr. Bickford on the train, yes, sir.

Q. You came with Judge Bickford on the train?

A. No, sir—well, I came on the same train.

Q. From Butte? A. From Missoula.

Q. That is a three or four hours' journey, is it not, from Missoula here? A. Yes, sir.

Q. You had abundant opportunity to talk the matter all over with him, did you not?

A. I presume our conversation lasted ten minutes, not over that.

Q. Do you know how you happened to meet Judge Bickford on the train at that particular time?

A. He was passing through, and my husband had

(Testimony of Mrs. May Hawthorne.)

met him in Missoula, I think, and introduced him to me, and he talked with us a few moments.

Q. When did your husband come to Montana?

A. About a month ago.

Q. So you never saw Mr. Cobban until you saw him here in the courtroom this morning?

A. No, sir, not to know who he is.

Q. How did you come to sell to him, then?

A. My brother wrote me that this land was as good, he thought, as the other claims that were sold at that time, and that is how I knew that Mr. Cobban would buy it.

Q. Where were you when you received this written communication from your brother?

A. At my home, in Lincoln, Illinois.

Q. How long a time after you returned was it that you received this communication?

A. It must have been some weeks; I couldn't tell exactly. It takes about a week to go from here there.

Q. Did he enclose the deed to you at that time?

A. Yes, sir.

Q. And you and your husband acknowledged it there and sent it back? A. Yes, sir.

Q. That was the first communication that you had had with your brother after you left him, was it not?

A. It may have been; I could not say with regard to that. We correspond regularly.

(Testimony of Mrs. May Hawthorne.)

Q. How long were you on the land when you went out there, Mrs. Hawthorne?

A. Well, I couldn't say; sufficient time to look it over pretty well.

Q. How far was it from where you were stopping?

A. I should think twelve or fifteen miles. We drove first to Ovando, and from there out some miles, I couldn't say how many; I should think four or five miles, perhaps.

Q. Did you make the trip in one day?

A. Oh, yes.

Q. Why did you go to this place the second time?

A. That is required, is it not?

Q. Yes, I think so. A. I don't know.

Q. So, as I understand it, you made two trips there, each of them finished in one day? A. Yes, sir.

Q. What did you do after you got out to the land?

A. Well, we got out of the buggy and walked around and looked it over and gathered some specimens and returned.

Q. Were there any other occasions that you visited this land in your life except the two that you refer to?

A. No, sir.

Q. Who did you come to Helena with the first time?

A. My brother and Mrs. Faust, I think.

Q. She is the wife of Mr. Faust, member of the firm of Jakways & Faust? A. Yes, sir.

Q. Who did you come with the second time?

(Testimony of Mrs. May Hawthorne.)

A. My brother Lewis and my father.

Q. You were on your way home the second time, were you not? A. Yes, sir.

Q. And after having finished your business here at the time of making your final proofs, you proceeded eastward? A. Yes, sir.

Q. Who attended to the business for you at the land office, if anyone? A. Was his name Greene?

Q. I mean besides the officials?

A. Oh, my brother Lewis.

Q. Who paid the money into the land office?

A. He did.

Q. Who attended to the furnishing of the witnesses and the advertising in the papers and the payment for the advertisement? A. I can't say.

Q. Was the matter left open entirely, Mrs. Hawthorne, as to when this money was to be paid back by you?

Mr. BICKFORD.—Objected to as leading and as irrelevant and immaterial.

A. Yes, sir. I think my brother probably was not in any great hurry for it.

Q. Did you know how much money was required?

A. Yes, sir.

Q. How much was it?

A. Something over five hundred dollars, as I remember it.

Q. And he advanced all the money, as you under-

(Testimony of Mrs. May Hawthorne.)

stood it, and it was to be left open as to when it was ever to be paid back? A. Yes, sir.

Q. Did you know, from living in his family, whether or not he was in financial condition to do that?

A. Yes, I had good proof of that.

Q. Mrs. Hawthorne, you went east at that time, and have remained away for years? A. Yes, sir.

Q. Do I understand that, when you left for the east after having made this final proof, that you had no understanding with anybody or with your brother that you were to sell that land?

A. I had no understanding with any person with regard to the disposition of it.

Q. What were you to do with it?

A. That I didn't know at the time.

Q. You didn't know how lon gyou were to keep it?

A. No, sir.

Q. You didn't expect to live on it, did you?

A. No, sir.

Q. You did not expect to lumber it?

A. I had formed no plans.

Q. Didn't you at the time have any purpose in your own mind or plan which induced you to take up this land?

A. No, sir, I will frankly say I didn't; I merely wanted to possess it.

Q. Why did you wish to possess it?

(Testimony of Mrs. May Hawthorne.)

A. It seemed to me a good piece of property to have; it was a beautiful piece of wooded land.

Q. Had you not heard from your brother that there was a demand for that kind of property?

Mr. WALSH.—Objected to as leading.

A. No, sir.

Q. You had heard nothing during the three months that you were visiting your brother that such land could be sold and there were purchasers in the field?

A. No, sir.

Q. And as I understand you, your sole purpose in having your brother buy this land for you was that you might possess a piece of wooded land in Montana while you were living in Illinois?

Mr. BICKFORD.—We object to that, because the witness has not stated that she asked her brother to buy this land for her, and that the testimony of the witness already given is that she bought the land for herself, having borrowed the money with which to do so of her brother.

A. I cannot answer that question by yes.

The EXAMINER.—Answer it any way you see fit so as to express your meaning.

A. In the first place my brother did not purchase the land for me, but my desire was to purchase the land in Montana.

Q. You said that he spoke to you about it first, and that he furnished you the money, did you not?

(Testimony of Mrs. May Hawthorne.)

A. He said that I could enter upon that land; he gave me the information with regard to it.

Q. And that he would furnish you the money and leave it entirely open as to when you would ever pay it back?

A. Well, he didn't put it exactly that way.

Q. What was it?

A. I stated that I had not the means to do it with, if it was to be purchased for so much, and then he agreed to furnish me the funds.

Q. And with the understanding that you could pay it back when you got ready?

A. I think there was nothing said in regard to that?

Q. You didn't give him any note or mortgage?

A. No, sir.

Q. Nothing whatever was said at all by you to him or by him to you during the remaining time that you remained with him as a visitor, about the disposition of this land?

Mr. WALSH.—Objected to as leading.

A. Never.

Q. And you left with it entirely open and uncertain what you were to do with it?

A. Yes, sir; I was undecided in my own mind.

Q. Hadn't you talked with your brother in regard to disposing of the property?

Mr. WALSH.—Objected to as leading.

A. Never.

(Testimony of Mrs. May Hawthorne.)

Q. Not a word? A. Never.

Q. Nor with anybody else?

A. Nor with anybody else.

Q. When you returned to your family and got home to Lincoln, Illinois, while you were conscious of the fact that you owned this one hundred and sixty acres of land in Montana, you had no plan or purpose whatever as to what you were to do with it?

A. Not at that time.

Q. And nothing had been said to you by anybody in regard to the disposition of it? A. No, sir.

Q. Now, Mrs. Hawthorne, if that was so, how do you account for the fact that within four days after you made final proof here in Helena, Montana, you and your husband executed a deed to that same property, in Lincoln, Illinois, to R. M. Cobban?

A. It can't be possible.

Mr. WALSH.—There is no proof so far that this witness executed this deed four days after she made final proof.

Mr. MAYNARD.—Well, I will make the proof.

Mr. WALSH.—Call the attention of the witness to the facts, then, before you make the proof. We will agree with you, if you will tell the witness the dates, what the dates are; there will be no controversy about it.

Q. I ask you, Mrs. Hawthorne, to examine with me the record in this case, reading from page 2428: "The

(Testimony of Mrs. May Hawthorne.)

next entry is cash entry No. 6190, of Mrs. May Hawthorne. Q. And what is the date of her sworn statement? A. Her sworn statement was made July 8th, 1899. Q. And for what land is it? A. For lots 1 and 2 and the south half of the northeast quarter of section four, township fifteen north, range twelve west. Q. Who were her witnesses? A. The witnesses were Lewis S. Jakways, Nels Opsata, Alfred Stewart and Chauncey L. Griswold. Q. And what was the date of the final receipt in this case? A. September 16th, 1900." Did you see that?

A. Yes, sir, that is what it says.

Q. Now, I renew the question that I put to you: How do you account for the fact that within four days after September 16th, the day that you were here and the final proof was made, that this deed had, in the meantime been forwarded to you and was received by you on the 20th and acknowledged by you and your husband?

Mr. BICKFORD.—We object at this time that the witness has not stated that she acknowledged the deed on the 20th.

Mr. MAYNARD.—The record shows: "On this 20th day of September, in the year 1899, before me, F. W. Becker, a notary public in and for the county and State aforesaid (State of Illinois, County of Logan), personally appeared Mrs. May Hawthorne and Orrin E. Hawthorne, her husband, known to me to be the par-

(Testimony of Mrs. May Hawthorne.)

ties whose names are subscribed to the within instrument, and acknowledged to me that they executed the same."

Mr. BICKFORD.—The question of counsel presupposes that the deed imports absolute verity. The witness is answering to the best of her recollection, and has a right to state when the acknowledgment was made according to her recollection, and this is not binding on the witness in any way or shape.

A. I cannot tell you the date, sir; I could not possibly do it after so long.

Q If, as a matter of fact, the notary's certificate is true and was within four days after you left Helena, how do you account for the fact, if nothing had been talked over with you and your brother, that he enclosed a deed and that it was received by you by the 20th?

A. I still say that I made no plan nor agreement of any sort with my brother.

Q. The consideration named in this deed, Mrs. Hawthorne, is fifteen hundred dollars? A. Yes, sir.

Q. Do you know what the consideration was in fact, of your own knowledge?

A. Fifteen hundred dollars.

Q. How do you know about that of your own knowledge?

A. I don't know as I can tell you; I don't know how I can put that exactly. That was the amount, however,

(Testimony of Mrs. May Hawthorne.)

that was stated to me by my brother and the amount which was received for the land.

Q. Up to this time all of the money that was required to pay for the land and the expenses had been paid out by your brother, as I understand it?

A. Up to the time of final proof, yes, sir.

Q. And including the day of final proof?

A. Yes, sir.

Q. Now, then, what I ask you now, is: did you after that time receive any money at all of your own from Mr. Jakways or anybody else?

Mr. WALSH.—Objected to as leading.

A. Yes, sir.

Q. How much did you receive?

A. I received over two hundred dollars.

Q. How much over two hundred dollars?

A. Two hundred and twenty-five dollars or such a matter.

Q. When did you receive that amount?

A. Part of it sometime ago and some of it this summer.

Q. Since you have returned here? A. Yes, sir.

Q. That would be since the 20th of last June?

A. Yes, sir.

Q. Do you remember how many days ago it was that you received this balance?

Mr. BICKFORD.—Objected to as immaterial and irrelevant.

A. No, sir, but I should say two or three weeks.

(Testimony of Mrs. May Hawthorne.)

Q. Do you remember the fact of the United States Marshal serving a subpœna upon you?

A. I do.

Q. Was it before or after that that this balance of this money was paid to you? A. It was before.

Q. How long before? A. Perhaps a week.

Q. You are not certain as to the number of days before? A. No, sir.

Q. How much was paid you at that time?

A. Twenty dollars.

Q. And how much had been paid you before?

A. Something over two hundred dollars.

Q. When did you receive that?

A. I couldn't tell you just how long ago; it is over two years, I think.

Q. From whom did you receive it?

A. From my brother.

Q. By a check or draft sent you?

A. I suppose so.

Q. Do you know? A. I don't know.

Q. Why not? A. I think it was a check.

Q. Whose check was it? A. His, I suppose.

Q. Have you any recollection on the subject?

A. That much, yes, sir.

Q. Well, what much?

A. That I received it and the amount that I have stated, and that it was in his name.

Q. In Mr. Jakway's name? A. I think so.

(Testimony of Mrs. May Hawthorne.)

Q. Or the firm's name?

A. Yes, perhaps the firm's name.

Q. And that was for about two hundred dollars?

A. Yes, sir.

Q. Have you now a present recollection as to the exact amount?

A. I think it was two hundred dollars exactly.

Q. And that, with the twenty dollars that you received since you came back, is what you received for your land? A. Yes, sir, if you put it that way.

Q. And that is all? A. So far, yes, sir.

Q. Do you expect to receive more?

A. Yes, I surely do; my money is in my brother's hands.

Q. But have you talked that matter over with him?

A. To some extent.

Q. During the two years that have elapsed since you received the two hundred dollars, have you made any demands for any more? A. No, sir.

Q. You don't know, as a matter of fact, how much will be coming to you, do you? A. Very near.

Q. Well, how much?

A. Still, I should think, five or six hundred dollars.

Q. How do you make that out?

A. Well, the land cost five hundred dollars to begin with, or something over, and I have already received between two and three hundred dollars.

Q. Then what else?

(Testimony of Mrs. May Hawthorne.)

A. Well, the difference between that and fifteen hundred dollars.

Q. Have you any knowledge as to the price except as to the amount that is named in the deed?

A. Do you mean the price received for the land?

Q. I mean the purchase price, except as named in the deed. A. Fifteen hundred dollars.

Q. I say, have you any knowledge, except that this amount is written in the deed?

A. Why, I certainly know that it is in his possession for me. Certainly.

Cross-examination waived.

It is stipulated between the parties that the Examiner may read and certify that the foregoing testimony of Mrs. May Hawthorne is correct, with the same effect as if she had read and signed the same.

I hereby certify that I have read the foregoing transcript of the testimony of Mrs. May Hawthorne, and that the same has been correctly reported and transcribed and is a substantially correct statement of the testimony given by said witness.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

By Mr. MAYNARD.—I desire to have the stenographer copy this subpoena into the resord, and to take this statement. The record shows that Mr. Stiff, of the firm of Marshall & Stiff of Missoula, was sworn here yesterday morning to testified here in obedience to a subpoena

(Testimony of Mrs. May Hawthorne.)

to which I called his attention. While on the witness-stand, he said that Colonel Marshall, his partner, would be here on the next train, as I understood it, that afternoon or to-day at any rate; and last evening, between the hours of five and six, I received a telephone message from Colonel Marshall at Missoula, to the effect that he had delivered the original contract that was named in the subpœna, and the duplicate original contract to Mr. Cobban, and that Mr. Cobban would be here in Helena with the documents called for. As far as the statement of account and the deeds were concerned, he said he had no knowledge, and asked me if, under those circumstances, I should insist upon his obeying the mandates of the subpœna; and I told him that he needn't come at the present time. If there is any question in regard to that, I am willing to be sworn with reference to it, and testify with regard to those facts.

By Mr. WALSH.—No, we admit the fact concerning the conversation with Colonel Marshall to be as stated by Mr. Maynard, and we do not care to have counsel put upon the stand for the purpose of testifying to those matters.

By Mr MAYNARD.—I would like to recall Mr. Cobban, and question him with reference to the subpoena duces tecum, and the documents therein referred to.

Thereupon, R. M. COBBAN resumed the stand for further examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, was a subpoena duces tecum served upon you by the United States Deputy Marshal, Mr. Charles F. Gage?

By Mr. WALSH.—Wait a moment. Before we go any further, we desire to inquire of counsel for the Government, what he expects to prove by the witness, R. M. Cobban at this time.

By Mr. MAYNARD.—I propose to show that a subpoena duces tecum was served upon Mr. Cobban, and also served upon Mr. Marshall and Mr. Stiff.

By Mr. WALSH.—You expect to show the service upon Mr. Marshall and Mr. Stiff of a subpoena duces tecum by Mr. Cobban?

By Mr. MAYNARD.—No, I want to ask him some questions, though. I expect to show that the subpoena was served upon Mr. Cobban also.

By Mr. WALSH.—The return itself is the best evidence of the fact.

By Mr. MAYNARD.—The fact is, the deputy marshal has left the subpoena with Deputy Marshal Faust in order to have the return made out, and he has not signed it yet.

By Mr. WALSH.—Well, he will make a return upon it.

By Mr. MAYNARD.—But he hasn't done so yet.

(Testimony of R. M. Cobban.)

By Mr. WALSH.—He can make a return, and it will be filed among the papers in the case.

By Mr. MAYNARD.—Do you deny that?

By Mr. WALSH.—I concede the fact, but I do not concede it to be evidence in the case by reason of that fact, but I object to any evidence of its character because it isn't proper. It isn't rebuttal testimony. I admit that this subpoena was served, but I do not admit that it is evidence in the case, or proper to introduce upon rebuttal. I do not admit it as a fact, or as part of the history of the case. And I submit that it is not proper to offer evidence upon that matter by this witness.

By Mr. MAYNARD.—I expect to prove by this witness that he has in his possession the original contract, and the duplicate original contract, which is named in the subpoena, and ask him to produce it.

By Mr. WALSH.—We object to this, and we object to the witness being cross-examined concerning these matters upon the ground that if it is testimony, it isn't proper rebuttal testimony, and the time within which the Government is to introduce its testimony has long since expired.

Q. Now then, Mr. Cobban, I ask you to answer the question as to whether or not you now have in your possession the contract which is referred to in the subpœna duces tecum?

(Testimony of R. M. Cobban.)

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial; it is not proper rebuttal testimony; and the time within which the Government is to introduce its testimony has expired.

A. It is in the possession of my attorneys.

Q. In the possession of your attorneys?

A. Yes, sir.

Q. When did you deliver it to them, Mr. Cobban?

A. To-day.

Q. And the duplicate original contract, also?

A. Yes, sir.

Q Did you also deliver to them the statement that is referred to in the subpœna duces tecum?

A. No, sir.

Q. Why not?

A. Because I wasn't asked to do so.

Q. Have you that with you?

A. I have yes, sir.

Q. Will you produce that?

By Mr. WALSH.—No. We will answer for the witness, that it will not be produced for the reason not only that the Government has no right at this time to put in any testimony on its own behalf, but because the testimony is not rebuttal. And we answer also to the same effect with reference to the so-called duplicate original contract, as well as the original contract. Both of them are here present, but we refuse to produce them because

(Testimony of R. M. Cobban.)

the Government has no right at this time to put in any further testimony. It isn't testimony in rebuttal, and the time has gone by for the Government to introduce its testimony in chief. We at all times have been amenable to the process of the court with reference to this matter, and we would long ago immediately upon service of the subpoena duces tecum have produced the papers called for had counsel for the Government taken the proper steps to get these papers. But he has not seen fit to do so until now.

By Mr. MAYNARD.—The answer of the Government is that the record shows that from the beginning, the Government, time and time again has asked counsel to produce the documents called for; that written demands have been made upon the defendant, and upon his solicitors, and upon Mr. Cobban to produce these documents. Mr. Cobban has been in constant attendance at the hearing in this case, and his attention has been called to the fact; that the copy of the contract in the possession of the Government, and which is an exhibit in this case here, was a copy of the original contract; and we have asked him to produce the original for the purpose of ascertaining whether the copy, which is on file in this case, and an exhibit herein, differed from the original, and that in the face of his constant refusal, and by reason of his constant refusal, we have been compelled to use such papers as we happened to have in our possession; and that the subpoenas—

(Testimony of R. M. Cobban.)

this last step that was taken, was but one other step taken in the hearing to compel the production of these papers. That the point that is now made by my brethren is purely technical; that under the circumstances of this case, we adopted the most approved method of securing the production of the paper here, and that the method resorted to by the Government was the only method, and the best way to secure their production; and that this last method was simply a continuation of the steps that were taken from the beginning of this hearing, to secure the production of this original contract, and the other papers called for in the subpoena. Mr. Cobban, while not on the record a party to the suit, is to all intents and purposes a party to the case and the principal party, so far as the evidence is concerned, and so far as the material facts essential to the case are concerned, and that the Government will insist upon the production of these papers, and upon the obedience to this subpoena, and the demands that have been previously made upon Mr. Cobban, and will not tolerate the disobedience or willful refusal to comply with the command of the subpoena, and the demands that have been made and served upon Mr. Cobban, and the defendant in this case and his solicitors.

By Mr. WALSH.—In answer to the last statement of counsel, there is no disobedience whatever to the subpoena. The papers are here, in obedience to the command of the subpoena; they are here now in court, but

(Testimony of R. M. Cobban.)

we refuse at this time to surrender them to the counsel for the Government, for the reason that the Government has no right to them; they have only a right to them for the purpose of offering the same in evidence in this case; but they have no right at this time to offer them in evidence in this case, for the reason that the time within which the Government is permitted under the rules of the court, and the stipulations to introduce its testimony in chief, has long since expired.

By Mr. MAYNARD.—The right to offer them in evidence is not the right which has accrued to-day; but it is a continuation of the right which we have had from the very beginning of this hearing to have the papers produced. We offered in evidence then the best evidence that we had in our possession, and served notice upon counsel for the defendant, and upon the witness, R. M. Cobban, to produce these papers, in order to avoid the necessity of producing secondary evidence of their contents.

By Mr. WALSH.—There is no necessity for counsel asking the witness these questions at this time. It is not proper rebuttal testimony, and the time has expired within which the complainant has a right to introduce its testimony.

By Mr. BICKFORD.—There is no necessity of arguing this question at this time as we conceive it.

By the EXAMINER.—I think the remarks of counsel

(Testimony of R. M. Cobban.)

ought to be put into the record. He has a right to explain his position.

By Mr. MAYNARD.—(Continuing.) We offered in evidence the best evidence we had, and we stated that the best evidence we had was offered, and we served upon the other side a demand upon Mr. Cobban, and upon the defendant, that he should produce that which he admitted to have in his possession, and this proceeding is simply a continuation of the attempt which was made, and which was insisted upon at the beginning for the purpose of securing possession of the papers referred to in the subpoena, and we claim the right now to offer them in evidence.

By Mr. BICKFORD.—Our position is that the counsel for the Government has no right to arbitrarily demand of any witness, any paper that is in his possession; that he, as well as counsel representing the defendant in this case, should be compelled to pursue the usual course prescribed by law for the production of evidence. Mr. Cobban is not a party to this action, and as such isn't compelled to produce papers, upon the service of a subpoena duces tecum at this stage of the proceedings at any rate, and a demand served upon him by counsel in the case. The presumption is that the counsel for the Government knew the proper method for obtaining the production of the original contract; that the proper way to obtain the production of this testimony was by a subpoena duces tecum, but the time is now long since past when he could introduce the same

(Testimony of R. M. Cobban.)

in evidence, and at this time it is not proper to produce or cause to be produced, or to offer in evidence, or to attempt to offer in evidence this contract, for the reason that the same was a part of this case in chief. The subpoena duces tecum has been obeyed as appears by the return, and by the answer of the witness, and was obeyed as soon as it was served. The evidence in this case shows, and the reply over the telephone by one of the parties up on whom it was served shows that the papers had been in the possession of the firm of Marshall & Stiff, and not in the possession of the witness, and it also appears that the contract has been at Missoula, and could have been produced had the proper method for its production been pursued in the first instance.

By the EXAMINER.—I don't desire to make any order at this time without an investigation of the legal question that is involved.

By Mr. MAYNARD.—If there is any question about that I would like to make at any time you may fix, an argument upon that point.

By the EXAMINER.—I would like to say that it isn't so much the argument, as it is the authorities that I would like to see. The reason I don't require the production of the documents is that I don't want to do a thing and then afterwards find out that I am wrong. I should like to have the authorities upon the matter before me. My view of the matter is that the proper way to obtain these papers was by the service of a subpoena

duces tecum upon the parties in the first instance. I know that in court papers are often produced voluntarily without waiting for any legal process to be served. But the counsel for the defendant have stood upon their legal rights all the way through this case, and have insisted that the legal method be pursued in this matter. At this time I don't wish to make any order requiring the production of these papers, but I think if there are any authorities upon this matter that counsel might produce them. There may be a case bearing directly upon this question.

By Mr. WALSH.—I know of no such method of procuring the production of papers as that pursued by counsel for the Government in this case. The only method that I know of for the production of papers, as in this case, is by a subpoena duces tecum at the proper time. If a party is a witness the only way that he can be obliged to produce the paper is by a subpoena duces tecum. In the case of a party a notice can be served, and if the party refuses to produce them, secondary evidence of the contents of such paper can be introduced in evidence. The giving of a notice is no part of the step to be taken to produce the paper at the trial. There is only way known to the law to compel the production of papers—that is, two ways, one by serving notice and procuring an order of court when a a party is required to produce the papers, and when the paper is required from a person not a party to the case, by the service of a subpoena duces tecum. Mr. Cobban

(Testimony of R. M. Cobban.)

is not a party to this case, and the service of a demand upon him to compel the production of a paper is nugatory. If the papers were in the possession of the defendant, the Government would have been entitled to produce secondary evidence of their contents, provided they had refused to produce them upon the receipt of a proper notice and demand.

By Mr. MAYNARD.—As a matter of fact the papers have been in the possession of the defendant from the beginning, or under his control.

By Mr. WALSH.—The testimony as to that matter is perfectly clear, and it shows that the papers referred to have been in the possession of Marshall & Stiff all this time; and it doesn't make any difference what the Government claims, the Government is in error, and the papers have never been in possession of the defendant. I haven't any doubt in the world that if the defendant asked Messrs. Marshall & Stiff for these papers, that they could have got them. But they have been in possession of Marshall & Stiff ever since the settlement of the case of Griswold vs. Cobban until they were produced under the subpoena duces tecum, and the evidence is clear upon that point.

By the MASTER.—Is there anything further?

By Mr. MAYNARD.—What I expected to do was to finish the case for the present, and then adjourn to put in our rebutting proof. And I would like to have that course taken, and at that time, if it is agreeable to

counsel on the other side, we can consider this other question that is now before us.

By Mr. BICKFORD.—As I understand it, if your Honor please, we have adjourned to this time to put in the rebuttal proof. That was the express understanding when we adjourned the last time, and we were to convene at this time for the purpose of taking the rebuttal testimony to be offered by the Government. I never have consented to any other course. And at this time, upon behalf of myself, and my client, demand that the rebuttal proof be produced, if there is any to be produced.

By the EXAMINER.—Otherwise we can adjourn to any time within the twenty days—the twenty days began yesterday.

By Mr. MAYNARD.—That is satisfactory with the single exception that the Government stands upon its rights under the stipulation to produce the entrymen and entrywomen that have not been called.

By Mr. WALSH.—Let it be understood that we consent to no adjournment, and we will never consent to the introduction of any proof of any of the entrymen or entrywomen in this case, for the reason that it would not be rebuttal testimony.

By Mr. MAYNARD.—Well, the answer to that is this: I conceive that it would not be rebuttal testimony, but so far as these entrymen and entrywomen are concerned, the case stands as it stood before the very be-

(Testimony of R. M. Cobban.)

ginning of the Government's case, under the stipulation, and the time we are now occupying for the introduction of the testimony of the entrymen and entrywomen who have not heretofore been called, forms no part of the time limited for strictly rebuttal proof.

Now, at this point, I desire to read the subpoena which is on file in the clerk's office, and it is for the purpose of showing that the Government at once, at the close of the defendant's case, took steps to secure the attendance of the absent entrymen and entrywomen.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, District of Montana.

The President of the United States of America, to Martha M. J. Doney, Charles Cloutier, Elizabeth A. Muchmore, Bell Bryan Evans, Mathilde Dodd, Arnold Mickels, Clara Bell Mickels, Sarah Yarger, Mathilde Eddy, Daisy L. Chattin, Dan McGillis and Jennie Mize, Greeting:

You are hereby required that all and singular business and excuses being set aside, you appear before Honorable Henry N. Blake, Examiner in Chancery, in the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the District of Montana, to be held at his office in the Power Block, in the city of Helena, in the County of Lewis & Clarke, State of Montana, on the 28th day of July, A. D. 1902, at ten o'clock

(Testimony of R. M. Cobban.)

A. M., then and there to testify in the above-named cause now pending in said court on behalf of the United States. The return of the officer is: I have served this writ personally by copy upon Mrs. Martha M. J. Doney, and Elizabeth A. Muchmore on the 24th day of July, 1902, and on Mathilde Eddy, and Sarah Yarger, and Jennie Mize on the 22d day of July, 1902, and on Daisy Chattin, and Belle Bryan Evans, on the 25th day of July, 1902, at Clearwater, and on Dan McGillis, on the 26th day of July, 1902, at Sunset, and on Mathilde Eddy, on the 26th day of July, 1902. That I have not been able to find Charles Cloutier, Arnold Mickel, and Clara Belle Mickel.

Dated this 26th day of July, 1902.

J. P. WOOLMAN,
U. S. Marshal.
By C. F. Gage,
Deputy.

By Mr. BICKFORD.—I also desire to have put in the record the following:

"Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the United States Circuit Court, this 23rd day of July, in the year of our Lord, one thousand nine hundred and two, and of our Independence the 127th. George W. Sproule, Clerk. By F. H. Drake, Deputy Clerk."

And to have noted in the record that this case was called on for trial sometime in the month of November, 1901, and from the subpoena it appears that no effort

(Testimony of R. M. Cobban.)

has been made upon behalf of the Government to obtain the attendance of these witnesses, and was not made until the 21st day of July, a period of six or eight months after the time the case was first called for hearing.

By Mr. MAYNARD.—That is a gross mistake on the part of counsel, because, as a matter of fact, the record shows that frequent attempts were made to secure the attendance of these various witnesses at the time the Government was introducing its proof, and a subpoena was served upon them, or attempted to be served upon them, that they were either at that time sick, or unable to be found, or out of the State. Sarah Yarger was in California, as the return of the officer shows, and that these people that were named were sick, and their sickness made known to the Examiner. One or two were not to be found, and it was by reason of that fact, and sickness, which prevented the Government from procuring the witnesses; that the claim was made that we should have, in equity and fairness the right to produce them, and it was on that basis, which was known at the time, that the stipulation was entered into, that the agreement was made that said witnesses should be examined.

By Mr. WALSH.—All these useless recitals with reference to the witnesses, made by counsel for the Government, we move to be stricken out of the record, for the reason that they have no place in the record.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—Now, what the Government insists is that it has the right to have the testimony of these absent entrymen and entrywomen upon the stand to testify, and to secure their attendance, if possible, and unless we can agree to that, why, we shall insist upon our rights and stand on it and secure them if it is possible.

By Mr. WALSH.—All these useless recitals with reference to the witnesses, made by counsel for the Government, we move be stricken out of the record, for the reason that they have no place in the record.

Then the only matter for the Examiner is to fix the time within which the hearing shall be adjourned to.

By the EXAMINER.—What is the request of counsel?

By Mr. MAYNARD.—I desire that we have two weeks from to-day within which to put in our rebuttal proof, and at that time we will produce these witnesses, if it is possible, and then we shall endeavor in the meantime, to secure their depositions if it should be determined that we could not get them so as to have them present at the hearing, should we deem it necessary to do so.

Except the time that is taken up in the examination of witnesses—entrymen that are named in the bill of complaint, and embraced in the stipulation. Of course that is understood.

By Mr. WALSH.—Let us be sure that there is no misunderstanding about this matter, and I will say right here and now, lest there should be any misunderstand-

(Testimony of R. M. Cobban.)

ing, in any way, shape or manner, it may as well be understood, that we shall at all times object to the examination of any such witnesses, upon the ground that no right exists under the stipulation or any rules of court for the examination of these witnesses.

By Mr. MAYNARD.—I desire to read in evidence the Doctor's certificate with reference to Sarah Yarger and Mathilde Eddy, as follows:

"T. H. Hanbridge, M. D., Physician and Surgeon, Oculist and Aurist. Victor, Montana, July 26, 1902. This is to certify that Mrs. Sarah Yarger is ill and has been for some time and is unable to go to Helena. Yours truly, T. H. Hanbridge."

"T. H. Hanbridge, Physician and Surgeon, Oculist and Aurist. Victor, Montana, July 26th, 1902. This is to certify that Mathilde's health is in such a condition that she can't leave home. Yours, truly, T. H. Hanbridge."

Well, now, we understand each other, that I will have such rebuttal proof as I desire to introduce at that time, and also these other witnesses, and shall insist that the time that is taken up in their examination shall not be counted within the twenty days for rebuttal proof.

By Mr. WALSH.—We shall also insist that the examination close within the twenty days, beginning yesterday.

By the EXAMINER.—Two weeks from to-day then, will be the 12th day of August, with that understanding

(Testimony of R. M. Cobban.)

then, we will now adjourn until the 12th day of August, 1902, at ten o'clock A. M.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

R. M. COBBAN, after being recalled as a witness for complainant in rebuttal, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, have you in your possession, and will you produce the original deeds, certified copies of which I have now called the attention of the notaries public to?

A. I have some of the deeds.

Q. Have you those deeds?

A. I don't know whether I have or not, because you only called for them by number, and you did not specify the names so that I could look. In your evidence here you spoke of those as being exhibits so and so.

Q. Well, it was the deed of Harrison Dodd and Harriet Watson.

A. I haven't the deed of Harrison Dodd, but I have of Harriet Watson.

Q. Will you please show it to me.

Mr. WALSH.—We ask counsel to state what he wants the deed for.

Mr. MAYNARD.—I want it for the purpose of offering the same in evidence as a part of the exhibits in the case,

(Testimony of R. M. Cobban.)

so that, as a matter of fact, from an inspection of the deeds themselves, to show that they were prepared in advance and taken to the notary for acknowledgment, to rebut the contention of the defense and of Mr. Cobban that this transaction was simply, as he claims, the result of negotiations which had been entered into between the parties by which they were to mortgage and not to deed. Our theory is that the arrangement from the beginning was, and it was agreed beforehand that they were to convey immediately after the final proofs had been made and the receiver's duplicate receipt had issued, and that in carrying out that agreement the deeds had been prepared in Missoula and brought here, and all that it needed to carry out the full agreement was to have these deeds that had been so prepared signed and acknowledged at the time of the payment of the one hundred dollars.

Mr. WALSH.—It appears now from the statement of counsel that the deeds are desired to be offered in evidence in support of the contention of the government with regard to which its evidence in chief was submitted, namely, that there was an agreement between Mr. Cobban and the entrymen, by which the entrymen were to convey after obtaining final receipt, and that this evidence is desired for the purpose of supporting that contention; wherefore it appears clearly from the statement of counsel that these deeds are not desired for the purpose of contradicting any testimony offered by the defendant or in rebuttal, but for the purpose of assisting the Government in making its

(Testimony of R. M. Cobban.)

main case, namely, that the evidence is desired as evidence in chief. We refuse to deliver up the deeds to be offered in evidence for any such purpose, for the reason that the time has long since gone by in which the government had any right to submit evidence in chief, and this is evidence in chief, if it is material at all, and is not rebuttal. We agree, however, that if the counsel for the government will call to the attention of the Master or the counsel for the defendant any testimony on behalf of the defendant to the effect that these deeds were prepared by these notaries public or in the office of these notaries public, and had not been prepared before the parties went there for the purpose of acknowledgment, we will immediately surrender these instruments and permit them to be introduced in evidence.

Mr. MAYNARD.—Now, what I say is that it is for the express purpose of contradicting the testimony of Mr. Cobban, who has sworn over and over and over again that no arrangements had been made and entered into by himself and these entrymen and entrywomen that they were to convey to him immediately upon receiver's receipt issuing; he so swore over and over again. It is for the purpose of rebutting that testimony that we offer these proofs, these deeds. They were prepared in advance of their coming here to the city and before final proof had been made, and what I say further is that, under the decision of the Supreme Court of the United States, the witness and his attorneys are in contempt of the Court for their

(Testimony of R. M. Cobban.)

flagrant violation of the commands of subpoena, and proceedings could properly be brought against them for such contempt.

Mr. BICKFORD.—Let it appear on behalf of the defendants that counsel for defendant are not conscious of having been guilty of any contempt of Court, and further let it appear that at this time counsel for defendant insist that not only was it the testimony given by Mr. Cobban that no contract or agreement had ever been entered into prior to the time of final proof, but that also it was the testimony of all of the witnesses introduced upon behalf of the plaintiff in this case that no such agreement had ever been made or entered into. At this time we insist that there is no testimony showing or tending to show that the deeds which are now demanded by counsel were prepared either before the parties left Missoula or before the time of final proof, but that, on the contrary, the testimony shows or tends to show that the deeds were prepared after the time when final proof had been made, and at a time when the entrymen had a perfect right to sell.

Mr. WALSH.—We desire to add, also, with reference to the argument made by counsel concerning the admissibility of this testimony as rebutting the contention of Mr. Cobban, that the same thing might be said of every item of testimony introduced by the complainant in chief in this case.

The EXAMINER.—The deed which Mr. Cobban has is

(Testimony of R. M. Cobban.)

that of Harriet Watson, Exhibit No. 184. I understand that counsel refused to produce that.'

Mr. WALSH.—We do not refuse to produce it; we have it here before the Master, but we refuse to deliver it to counsel for the government for the purpose of introducing it in evidence at this time.

Mr. MAYNARD.—Now, what I say is that it is elementary, and adjudicated fully and squarely by a decision of the Supreme Court of the United States long ago, that we are entitled to whatever proof we conceive is material or relevant to the issue; that the Examiner has no power whatever to exclude the testimony, and what I say further is that the District Court or the Circuit Court of the United States has no power to exclude it; that it is absolutely necessary, and they can be compelled by process to receive the testimony thus offered, so that the Circuit Court of Appeals or the Supreme Court of the United States on appeal can have the entire testimony before them, for them to determine as to whether or not the objections that were made before the Examiner or the objections made before the trial Judge are good in law, and that all of the parties here subject themselves to critical censure, who prohibited or prevented the introduction of the proof that was offered; that the sole remedy, the sole claim that the opposing party has is to put their exceptions, and subject to the exceptions the testimony must be received, and I call the attention of the Examiner and counsel on the other side to the adjudication to which I

(Testimony of R. M. Cobban.)

refer, in the case of Bleeze against Garlington, 92 U. S., page 1, where it is settled for all time, or at least it is settled up to this time.

Mr. WALSH.—What is settled?

Mr. MAYNARD.—That we have a right to introduce this proof, and you have a right to your exceptions, and subject to your exceptions the testimony must be received by the Examiner.

Mr. WALSH.—That is a proposition which is not involved in the question before the Master. The question now is, the time having gone by for the introduction of testimony in chief, whether testimony in chief can be received, and whether the defendant at this time can be compelled to produce testimony for the use of the Government that can be used only in chief.

Mr. MAYNARD.—In reply to that, it is simply childish, it is the very essence of childishness, for counsel to maintain that it is competent for them or for the Examiner to pass upon my claim that this is rebuttal. That is a question of law. It is not for the Examiner to pass on this important legal question: it is not for Judge Knowles, sitting as a Circuit Judge to pass upon it finally; it is for him to pass upon it in the first instance, and it is my legal right to appeal from that and take it to the Circuit Court of Appeals and to the Supreme Court of the United States, and have them determine finally as to whether or not what I claim is rebuttal proof, is in fact and in law rebuttal proof. We have gone far enough in this assump-

(Testimony of R. M. Cobban.)

tion that, at this stage of the proceedings, it is competent for an Examiner to pass upon that important question of law.

Mr. WALSH.—Well, counsel could abbreviate this matter by resorting to such proceeding as the law entitles him to, rather than discussing the question here.

The EXAMINER.—Are there any other documents called for?

Mr. MAYNARD.—Yes, your Honor.

Mr. WALSH.—Those we have here, your Honor, the original contracts that were asked for at the hearing before, and I pass those to the Master simply for the purpose of showing that we complied with the demands of the subpoena to produce these papers, but not for the purpose of permitting the same to be used by the Government, to be put in evidence at this time.

The EXAMINER.—Yes.

Mr. BICKFORD.—There is one other objection that I want to put in the record at this time with reference to the deeds that are called for, and that is this: It appears from the record that counsel for the complainant has elected to present to this Court certified copies of all deeds that have relation to the land mentioned in the complaint, and as being in controversy in this case, and having elected to present to this Court and to place in the record the certified copies of the deeds mentioned, we deny that he has at this time the right to encumber the

(Testimony of R. M. Cobban.)

record by calling for the original deeds and having them placed in the record, and we say that such testimony is properly testimony in chief, and at this time, the time having expired within which he could present his testimony in chief, that he cannot demand the production of the original deeds for the purpose which counsel claims he makes such demands, or for any other purpose or reason.

Q. You were served with a subpoena yesterday, Mr. Cobban, were you not?

A. Day before yesterday, yes, sir.

Q. Have you that subpoena here?

A. Yes, sir, here it is.

Mr. MAYNARD.—I desire to have this subpoena read into the record.

Mr. WALSH.—One moment. That is not the proper way to proceed. The contents of this subpoena constitute no evidence in reference to the allegations upon which this cause is being tried. If this subpoena is material for any purpose, it is simply material for the purpose of proving somebody in contempt. It has no business in this record at all. If proceedings to bring the witness on the stand into contempt, or to bring counsel into contempt, are contemplated, as counsel for the Government seems to intimate, proof of this must be made some other way. If this is persisted in, I shall tell the witness on the stand not to answer. This subpoena has no business in the record; it is no testimony at all.

Mr. MAYNARD.—If counsel persist in their flagrant

(Testimony of R. M. Cobban.)

violation of the law of the United States, as decided by the Supreme Court of the United States in the case I have now presented before them, I shall at the first opportunity commence proceedings in the Court to see if they cannot be punished for contempt, both counsel and the witness.

Mr. WALSH.—I say to counsel now that we do not even ask any notice; if counsel thinks at any time that counsel for defendant are guilty of any contempt of Court, he may, without any sense of delicacy about the matter, proceed forthwith as he may be advised concerning their actions.

Mr. MAYNARD.—We certainly shall.

Q. In this subpoena, which you say was served upon you, and which you handed to me, you are commanded to bring with you the statement of account between yourself and C. L. Griswold, which you had in your possession when lately on the stand. I will ask you if you have that statement with you.

Mr. WALSH.—Counsel for defendant will answer for the witness that the witness handed him this morning the statements requested. He now hands the same to the Master, simply for the purpose of showing that the same was produced in obedience to the subpoena, and not for the use of the Government at this time as an item of evidence, on the ground that the same is not rebuttal evidence, but is a part of the case in chief of the Government, and that the time has long since gone by in which the Government can offer any evidence in chief or demand

(Testimony of R. M. Cobban.)

the production of any documents to be offered in evidence in chief.

Q. And also in this subpoena, the original deeds of the following-named persons: Charles Cloutier, John Gilles, Harriet Watson, Harrison Dodd, Lizzie Dodd, Cora Dodd, Edward Dodd, Hiram Dodd, Allen Dodd, and Marion B. Watson. I will ask you if you have obeyed the commands of that subpoena and have with you those deeds?

A. I have part of them.

Q. Will you produce those that you have?

Mr. WALSH.—No, counsel for defendant will answer for the witness, that those deeds that he has been able to find he has in his hand, and he now offers the same to the Master for the purpose of showing that the demands of the subpoena had been complied with by the witness as far as he has been able to find the deeds. He offers the same to the Master, not, however, for delivery to counsel for the Government for use as evidence in this case, for the reason that the same, if evidence at all, are only evidence in chief, and the time within which the Government could offer its evidence in chief has long since gone by.

Mr. MAYNARD.—Will the Master please name the deeds that the witness has handed to him.

The EXAMINER.—Yes. Marion B. Watson and Katie Watson, two deeds; Edward Dodd and Cora Dodd; Allen Dodd; Doc E. Watson and Harriet Watson; five deeds; the grantee being R. M. Cobban.

(Testimony of R. M. Cobban.)

Q. Where are the others, Mr. Cobban?

A. I don't know.

Q. Have you made a search for them?

A. I did. I have other deeds in the case that you mention, and any other deeds that are mentioned in the bill of complaint—I have quite a large number of those with me, but those that were particularly specified, I have made a search for and have produced all that I was able to find. The others I have no knowledge whatever where they are they have been mislaid in some manner, or lost.

Mr. MAYNARD.—We might as well dispose of this right off.

The EXAMINER.—That was the reason I asked the question.

Mr. MAYNARD.—Now I insist, Mr. Examiner, that under the settled law of the United States as declared in the case to which I called your attention and that of counsel, that it is settled that I have the perfect legal right to have these documents and all of them received as a part of the record in this case and as a part of the case made by the complainant; in my opinion this is clearly rebuttal, for the purpose of meeting the claim that is made by the defense and by Mr. Cobban on the stand, that he at no time had, as the primary purpose, the purchase of these lands from the entrymen and entrywomen named in the complaint; that his primary purchase was to loan money and that the

(Testimony of R. M. Cobban.)

same was to be secured by a mortgage on the lands, in consideration of his receiving one hundred dollars for his services, and that after the receipts were issued there was a sudden change of purpose on his part and on the part of the entrymen, and that instead of mortgaging, which they never did in one case, they did immediately convey to him; that, for the purpose of meeting that, it is competent for me to show by the original contract that was entered into between himself and Mr. Griswold, that the purpose for which these lands were secured was for him to buy them; that his purpose was to purchase the lands from the beginning, and not to make money by loaning money, and it is for that purpose that it is strictly and clearly rebuttal. If, as a matter of fact, there should be a legal question in regard to that, I have a right to have this testimony and all of it in the record to enable the Court of Appeals and the Supreme Court of the United States to pass upon that question, and they cannot pass upon it unless they have the proposed testimony before them, which is fully settled in the case of Bleeze against Garlington.

Mr. WALSH.—Bleeze against Garlington did not settle whether, after the time has gone by within which testimony in chief can be offered, the defendant can be compelled to produce papers for the purpose of having them submitted, which is the question before the Court now.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—The direct answer to that is this: that that is a question of law. It is not for counsel to determine that question; it is not for the Examiner to settle that question; it is not for the District Court to determine that question; it is not for the Circuit Court of Appeals to settle that question. The only time that it can be absolutely and finally settled is by the Supreme Court of the United States, if the case should be taken there, and it belongs in the record and is a part of the record, and no inferior Court has the power to say what the Appellate Court's decision might be in passing upon these questions.

The EXAMINER.—In order that I may understand the position of counsel; while these documents are in my possession, they are not to be delivered to the representative of the complainant for the purpose of examination or cross-examination?

Mr. WALSH.—Yes, sir, that is correct.

The EXAMINER.—During the recess I examined to a certain extent the questions involved in these objections. I am of the opinion that I can not exclude from the record in this case the contract and duplicate contract and the statement of account between the witness, R. M. Cobban, and C. L. Griswold, and the five deeds that have been produced this morning by the witness, Cobban, upon the ground that they are not rebuttal testimony and constitute part of the testimony in chief. My powers as Examiner are very limited, and

(Testimony of R. M. Cobban.)

I have no power to settle questions of this nature. The equity rules of the Supreme Court of the United States and the decisions under them contemplate that documentary evidence shall be received by the Examiner under the objections of the parties, and that in this matter the Circuit Court of the United States should have before it the contracts and accounts and deeds which have been brought before me under the subpoena duces tecum. Entertaining this view and for this reason, it is ordered that said papers be filed with other exhibits as testimony to be transmitted by the Examiner to the Court in which this case is pending. But inasmuch as counsel deny the right of the Examiner to hand these papers to the attorney for the complainant, and as a very important legal question is involved, the Examiner will treat the action of counsel for defendant as a refusal to comply with the order that said documents be treated as the other exhibits in the case, and leave the parties to seek any appropriate remedy that they may deem fit.

Mr. MAYNARD.—Now, if your Honor please, until this question is settled I cannot examine Mr. Cobban by way of rebuttal for the purpose of meeting the defendant's case, because I cannot use the papers that I claim I am entitled to.

The EXAMINER.—If there is no other matter on which you want to examine the witness, he will be excused for the time being.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—What I desire to say is this, that I desire to save the point, and announce that I shall take the opportunity of bringing the question before the Circuit Court of the United States for the District of Montana, and that after the decision shall be rendered in that case, I shall then claim the privilege of having an order entered, nunc pro tunc, for going on with the examination of Mr. Cobban, the same as if it had not been interrupted by what I deem a flagrant violation of the elementary rules of the United States Courts.

The EXAMINER.—Judge Knowles will be here on the 20th of the month.

Mr. WALSH.—Yes, so I am told. We will be ready to take it up then.

Mr. MAYNARD.—Just have it appear that counsel have announced that they will be ready to appear, and that, as I understand it, they waive the entry of any formal motion in the matter.

Mr. WALSH.—Oh, no, you didn't understand anything of that kind. We waive any question of time simply.

Mr. MAYNARD.—Very well.

Mr. WALSH.—However, the time intervening is ample to give notice, if counsel for the Government desires.

Mr. MAYNARD.—Well, I will say that I give notice

(Testimony of R. M. Cobban.)

now, in open Court in the presence of the Examiner, and in the presence of both counsel for the defendant, that I shall move the Court on the 20th of August or as soon thereafter as counsel can be heard that counsel for the defendant be required by an order of the Court to produce the documents which are now in the possession of the Examiner.

Mr. WALSH.—We would not like, by silence, to admit that the matter can be brought up in this form.

Mr. MAYNARD.—I desire to say further that a subpoena duces tecum was filed with the clerk this morning, in anticipation of this action, to be served upon both counsel for the defendant, and I will ask them as to whether or not they will insist upon the service of the subpoena.

Mr. WALSH.—I don't understand. What subpoena?

Mr. MAYNARD.—To produce these documents that you have already delivered over to the Examiner. Might the same be treated as if the subpoena was served upon you?

Mr. WALSH.—I don't know. The facts are simply as they are, and we cannot consider them as otherwise at all.

Mr. MAYNARD.—The subpoena is in the hands of the Marshal, and will be served upon counsel to-day. I will further, in addition to the subpoena, make a demand upon them to produce the documents and that

(Testimony of R. M. Cobban.)

they allow the Examiner to hand the same over to me for the purposes of examination. I do this to save the point. Here is the deputy marshal with the subpoenas now.

Witness excused.

Tuesday, August 12th, 1902, at two o'clock P. M.

Hearing was pursued pursuant to adjournment.

R. M. COBBAN was thereupon recalled to the stand for further examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, when you were on the stand before, it appears here in the record that I stated that I had overlooked some matter. I would like to call your attention to some of those matters now. I find that in the case of Exhibit 44, in the case of Arnold Mickels, and Clara Belle Mickels, that I failed to call your attention to the same.

By Mr. WALSH.—Wait a moment, this is cross-examination of Mr. Cobban, is it?

By Mr. MAYNARD.—Yes, part of the cross-examination of Mr. Cobban. Part of the matters that I had not called his attention to.

By Mr. WALSH.—Then we object to any further cross-examination of Mr. Cobban, at this time, for the reason that his cross-examination was concluded a long time ago, and the time for the submission of proof

(Testimony of R. M. Cobban.)

on behalf of the defendant has expired, and the Government has no right to cross-examine Mr. Cobban again, or to examine any witness now, except in rebuttal.

By Mr. MAYNARD.—I desire to say that I said, and it appears on page 5485 of the record, as follows: "I think that is all. I desire to say that I am conscious of the fact that in this vast number of cases, I have overlooked certain matters that I have not called the attention of the witness to, because I cannot now recollect them, and I desire simply to have it appear of record that I reserve the privilege to ask the witness, before the examination closes, certain questions that I have inadvertently overlooked, and that I cannot now recall." I am now availing myself of that announcement, and while it may cut into my time of producing purely rebuttal testimony, I claim the privilege of further cross-examining Mr. Cobban.

By Mr. WALSH.—The defendant does not admit any right on the part of the counsel of the Government to extend indefinitely the time within which he can cross-examine the witnesses by merely saying so.

By Mr. MAYNARD.—Well, I guess that is so.

Q. Do you know these Mickels, Mr. Cobban?

A. Yes, sir.

Q. Did you know them at the time?

A. I knew Mr. Mickels, yes, sir.

Q. Who is Arnold Mickel?

(Testimony of R. M. Cobban.)

A. Arnold Mickels was a lumberman in the Blackfoot country; he lived somewhere about Ovando, I think.

Q. I notice that he and his wife, Clara Belle Mickels, made their final proof on the 9th day of September, 1899, as appears from the record on pages 876 and 877, and on the same day they conveyed to you the land so entered upon which final proof had been made, and receiver's duplicate final receipt issued?

A. Yes, sir.

Q. Do you now recall what the facts and circumstances were that led up to that conveyance?

A. I remember some of them, yes, sir.

Q. What were they?

A. Mr. Mickels borrowed the money of me to make his final proof. He came to see me a few days before he made his final proof, and made arrangements with me to borrow sufficient money for that purpose; and I am not now certain whether he borrowed the money for his wife's claim too, or not; but my impression is that he had a portion of the money himself, and only borrowed a portion of me. After the arrangement that was made, it was simply a straight loan. He was to give me a mortgage. It was a short time mortgage; not a six months' mortgage. My recollection is, that it was a thirty or a sixty day mortgage.

Q. A thirty or sixty day mortgage?

A. Yes, after he had proven up on his claim I asked Mr. Mickels if he wished to sell it, and also his wife's

(Testimony of R. M. Cobban.)

claim, and they said that they did. I then made them a conditional offer, and that was this; that they would execute a deed, and if I was able to pay them the purchase price, within a certain length of time, then they were to—this deed was to be delivered to me. In the meantime it was to go into escrow in the Western Montana National Bank. If, however, I was not able at that time to do so, and couldn't avail myself of that privilege, then he was to execute a mortgage, as he had previously agreed to, unless he sold the claim to others, and paid me back the money. I had the right under the option to purchase the land. I think it was ten day or two weeks' option. The deed was turned into the Western Montana National Bank under those conditions. Later on I took the deed up—completed the purchase.

Q. How much did you pay Arnold Mickels and Clara Belle Mickels over and above the amount that was paid into the land office, and the expenses of proving up?

A. I don't remember the amount of the loan that I made to them. I knew nothing about their expenses. I had nothing to do with that, or anything of that kind. I knew nothing about when the entries were made. As I stated before, the loan was negotiated very shortly before the final proof was made on their claims.

Q. How much did you pay for the claim, if you remember?

(Testimony of R. M. Cobban.)

A. My recollection now is that I paid them about twelve hundred dollars for their claims.

Q. How much did you pay them over and above what was paid into the land office?

A. I have already stated that I don't know what was paid into the land office.

Q. Who paid it in for them?

A. I think Mr. Mickels paid it in. I think Mr. Mickels paid his own money into the land office; that he simply made a loan—got a loan of me, and I think he paid his own money into the land office. That is my recollection of it.

Q. When did he get the money of you, Mr. Cobban?

A. I think he got the money on the day that he made his proof.

Q. And the same day that he conveyed to you?

A. I think that the deed was drawn on the day that he made his final proof, after having returned to the office for the purpose of securing the loan. I then made him an offer to purchase these claims. That is my recollection about it.

Q. When was it that you first saw him in regard to this matter, with reference to the date of the final proof?

A. Well, I cannot recollect now; it might have been—my recollection is that it was only a few days before final proof was made. I don't think that I ever saw him in regard to this transaction more than two weeks before.

Q. Had you any acquaintance with him before that?

(Testimony of R. M. Cobban.)

A. I knew him by sight.

Q. Had you any business dealings with him?

A. No, sir.

Q. Well, if it was only two weeks before the final proof was made, the locations and filings had already been made, hadn't they? A. Certainly, yes, sir.

Q. Don't you know who attended to the locations and the filings?

A. Why, I have every reason to believe that Mr. Mickels himself did. Mr. Mickels was a lumberman, and had worked and lumbered in that region a good while, and I am quite certain that he did.

Q. Did you know when he came to see you about the loan, where the land was situated?

A. Why, he told me where the land was.

Q. Did you know the exact description?

A. Why, I found it very easily on the map.

Q. Did you know how much timber there was on it?

A. I am not certain whether I did or not. But I satisfied myself as to that before the money was loaned to him.

Q. What is that?

A. I satisfied myself, I say, that the loan would be a good one before loaning the money to him.

Q. How did you do that?

A. Well, I presume I had estimates on the amount of timber that was on the land.

Q. Don't you know that you had?

A. No, sir, I do not.

(Testimony of R. M. Cobban.)

Q. What makes you presume that you had estimates, then?

A. For the very reason that I was in that very business of securing estimates, and watching all the locations that were made in that district, and from time to time having them estimated, as well as Government lands in that section of the country—or any other land.

Q. Had you any talk with Mr. Griswold with reference to these entries?

A. I have no recollection of having had any talk with Mr. Griswold. He might have told me that such and such parties had locations there.

Q. You think he might have told you that?

A. I think he might have told me that in a general way.. But I have no recollection now of ever having received any information from Mr. Griswold.

Q. Well, why was it that in this case there appears to have been an exception, and that you didn't close the matter up at once after you took the deed; why didn't you pay for it at once?

A. Because, as I explained to you a minute ago, it was not an out and out purchase at that time; it was merely an option to purchase.

Q. It was merely an option to purchase?

A. Yes, sir.

Q. Well, why was that, if you know?

A. Well, I cannot tell you why it was, but it was. It was that way.

Q. Was it on your motion, or on his motion?

(Testimony of R. M. Cobban.)

A. Well, there could hardly be an agreement that was was not mutual between the two of us. I could hardly make an agreement alone.

Q. Well, did you propose it?

A. I made an offer to—a conditional offer to purchase the timber, that is, a kind of an option. If he wanted to sell it, I made a conditional proposition, and he agreed that I could have that timber for a certain amount of money within a certain length of time. If, however, I didn't pay for it within such a length of time, then he was to give me a mortgage, as he had previously agreed—as he had previously agreed to do, and the deed would have been destroyed.

Q. Then you proposed that, did you?

A. I did, yes, sir.

Q. Why did you propose it?

A. Well, I don't know that it is necessary—I can't tell you that. I couldn't tell you why, but that was the case.

Q. Well, wasn't it because of the—of some question in regard to the title?

A. I don't think there was any question as to that.

Q. You don't think there was? A. No, sir.

Q. Well, did you bargain for the two descriptions?

A. That is my recollection about it; that is, that I made arrangements with Mr. and Mrs. Mickels for the purchase of their claims—that is, that conditional proposition.

Q. Well, did you yourself pay the money into the land office for them? A. No, sir, I did not.

(Testimony of R. M. Cobban.)

Q. Well, who did, if you know?

A. I am under the impression that Mr. Mickels himself did, although I do not know.

Q. You never did receive a note from them, or a mortgage, did you, Mr. Cobban?

A. I never received any mortgage. I am not certain whether I received a note or not.

Q. You are not certain whether you received a note or not? A. No, sir.

Q. Well, as a matter of fact, a portion of Mrs. Mickels' description was canceled, was it not? The location?

A. I don't know that it was.

Q. Well, I read from the record the fact in regard to the Clara Belle Mickels entry: "Clara Belle Mickels, made timber and stone sworn statement, number 266, on June 30th, 1899, for the southeast quarter of section 32, township 14 north, range sixteen west. Notice was published in the "Missoulian," and C. L. Griswold, Mike McNamara—

By Mr. BICKFORD.—We object now to counsel reading the record, for the reason that it already is in the record, and it is merely a multiplication of words for us to pay for, and we object to it for that reason, and further, that it is not proper cross-examination of the witness.

Q. —M. Stairs and Arnold Mickels were named as witnesses. On September 9th, 1899, final proof was taken before William Q. Ranft, receiver, with M. Stairs and Mike McNamara as witnesses, and on the same day final receipt

(Testimony of R. M. Cobban.)

and certificate were issued. With our monthly returns the paper was transmitted to the Department at Washington, and by letter C. of July 28th, 1900, the timber and stone sworn statement was canceled as to the east half of the southeast quarter by E. W. W., and patent was issued for the remainder of the land, October 12th, 1900." Now, was that the reason that you didn't close the matter up at that time, the same as you did with the others, Mr. Cobban? A. No, sir, it is not.

Q. I call your attention to the record, Mr. Cobban, on page 5228, and show you—I notice that the question is asked as follows: "Well, isn't it true, Mr. Cobban, that you advanced the money to Mr. Wheaton, and to those other persons that stand on the same footing with him, with the express understanding—with the express intention in your own mind of getting the land that they entered—of buying the land that they entered," and you answered: "No, sir, it is not." The proposition was on the straight loan proposition, if—there is no question but what I may have thought that it would put me in a stronger position, when I was in the market, and they wanted to sell, it might give me a little—I knew the circumstances, and I knew what the timber was, and I may have thought something of that kind; but there was no intention—there was no thought of entering into any agreement with these people, whatever, to purchase their claims."

By Mr. BICKFORD.—We object to counsel reading the record to the witness, which he does evidently for the pur-

(Testimony of R. M. Cobban.)

pose of multiplying words, and prolonging the hearing of the case beyond all reasonable bounds. And further, that the same is irrelevant and immaterial, and it is imposing a hardship upon the defendant in this case, and increasing the cost of this examination, and it is entirely unnecessary, for the reason that it is already in the case, and need not be repeated.

By Mr. WALSH.—And further, because it is not proper cross-examination of the witness at this time.

Q. Now, Mr. Cobban, will you please explain to me how you harmonize that answer with this straight loan proposition—that straight loan proposition that you speak of, with the fact that you say on page 86 of the record in the contract that is in evidence in the case, "That the said party of the first part is desirous of acquiring title to good timber lands in Missoula and Deer Lodge counties, Montana; and whereas the said second party, from his acquaintance with the country is in a position to acquire it for said party of the first part; therefore, this agreement witnesseth."

By Mr. WALSH.—We object to that, because it assumes that a contract of that kind is in evidence, when in fact no such contract is in evidence, and counsel ought to recognize the fact that it is not in evidence, and that there is no evidence that this witness ever entered into such a contract as that. It is a manifest effort upon the part of counsel to prove the contents of this alleged con-

(Testimony of R. M. Cobban.)

tract by secondary evidence upon the statement of this witness as to what the contract contains.

By Mr. BICKFORD.—And for the further reason that the question is entirely argumentative, and is in no sense proper cross-examination, and further that the time within which counsel is permitted to cross-examine the witness has long since elapsed.

A. I haven't tried to harmonize it with anything at all, except to state the facts as they exist.

Q. Well, is it, or was it not, a fact that you were desirous of acquiring timber lands, Mr. Cobban?

By Mr. BICKFORD.—We also object to that question upon the ground that it is not proper cross-examination.

Q. What is your answer, Mr. Cobban?

A. I was in the market to purchase timber lands up to a certain extent, and for a certain time, as I have already stated in my evidence repeatedly, and that I wanted to buy timber lands, or anything that had a good title, and I was always willing to consider the purchase of such land, but from time to time I never knew, for any length of time ahead, how long I would be in the market for the purchase of the same.

Q. Well, as a matter of fact, you were in the market from the spring of 1899, all through that spring and summer and fall, into the next year, were you not?

A. I made some purchases the following year, yes, sir. In fact, during that year I made quite a good many purchases.

(Testimony of R. M. Cobban.)

Q. Well, then, if that was so, Mr. Cobban, and you did acquire these lands, how do you say that you had in mind the purpose of entering lands for the purpose of making loans upon them?

A. I hadn't said that I had entered those lands. I didn't enter those lands.

Q. What is that?

A. I didn't enter those lands, I say.

Q. Well, you made arrangements to advance money to the entrymen and entrywomen to enter these lands, and to pay their expenses?

A. I don't know that I made any arrangements with the entrymen or entrywomen; I made arrangements, as a rule, when there was a loan made. They came to me with a business proposition, as they would any other business proposition, and it was entered into as a business proposition, on the basis of a loan. I was purchasing land all the time during those seasons—during that season rather, under the scrip act, and I made numerous purchases from people who had title—who had acquired title, and had title for a long time. I was in the market to buy timber when I could get land with good title; but as I said, I didn't know how long that would continue. At no time did I know any distance ahead—two or three months ahead that I would be in the market for the purchase of timber.

Q. You remember the civil suit that Mr. Griswold brought against you under the contract that you made with him about the 22d day of May, 1899, do you not?

(Testimony of R. M. Cobban.)

A. Yes, sir.

Q. The suit that was brought in the District Court of Missoula County?

A. I remember that Mr. Griswold brought a suit against me, yes.

Q. Do you know what that suit was for?

A. Well, if—the suit was brought—it was brought for an alleged indebtedness.

Q. For what?

By Mr. WALSH.—Well, now this has all been gone into before.

By Mr. BICKFORD.—Yes, you took it up in the cross-examination of Mr. Cobban before.

By Mr. MAYNARD.—Well, I have gone over his testimony very carefully—over the entire testimony of Mr. Cobban, and I cannot find it; and if you can find it, I hope you will because I don't want to go into this matter again, especially if it has already been gone over.

By Mr. WALSH.—Well, you examined Mr. Cobban fully about it before.

By Mr. MAYNARD.—Very well, in one volume there is the entire testimony of Mr. Cobban, and if you can point out to me where I have asked him about this matter, I shall be glad.

By Mr. WALSH.—Well, I am satisfied that you have, and we therefore object to the question upon the ground that the counsel for the Government has already asked

(Testimony of R. M. Cobban.)

the witness fully with reference to the matter, about which he now seeks to interrogate the witness, and the Government has now no right to cross-examine this witness, the time having gone by within which the Government has the right to cross-examine him.

By the EXAMINER.—What is your answer, Mr. Cobban?

A. There are various items in the complaint. There were some thirty or forty items, I believe, that he claims I was indebted to him for.

Q. Thirty or forty items?

A. Yes, sir, and he was sworn—his complaint was sworn to, and the items were afterwards—it was shown that receipts had been given by him and checks given by me to him, and they were introduced in evidence. They showed where he had been paid fully for the items that he was charging me for.

Q. Well, it was—he brought a suit against you for his services that he rendered under the contract, which you say that you made with him on or about the 22d day of May, 1899, did he not?

By Mr. BICKFORD.—We object to the question upon the ground that it is not proper cross-examination, and further, it is a matter concerning which the witness has been interrogated, and fully testified to by him, and it is an effort upon the part of counsel to prove by the introduction of oral testimony matters which he has failed to prove by direct method; and is

(Testimony of R. M. Cobban.)

presupposing as an answer that has been made by the witness which has not in fact been made by him, and it is irrelevant and immaterial.

By Mr. MAYNARD.—The witness has stated that the contract was partly oral, and partly in writing.

By Mr. BICKFORD.—Well, that has already been gone into and testified to by the witness, and it is not proper cross-examination, and it is not proper for counsel to go into that matter again now at this stage of the proceedings.

A. He brought a suit against me on a bill which he presented to me, for an indebtedness which he claimed was due to him from me.

Q. Well, wasn't it on the basis of a contract which was made at the time that I refer to?

A. I think partially on the basis of some contract.

Q. Well, weren't the services that he was to render under that contract, services that he subsequently did render in and about the purchase of these lands that are named in the bill of complaint, Mr. Cobban?

By Mr. WALSH.—We object to that because the complaint itself in the case referred to, and the answer therein, are the best evidence of the contents thereof. And it is an effort on the part of counsel to prove by secondary evidence what he has failed to prove by direct methods, and further it is irrelevant and immaterial and not proper cross-examination.

(Testimony of R. M. Cobban.)

A. Why, there was a general—it was a mixed account; there were a great many items in there that had no reference to any particular contract, and some that perhaps might.

Q. Well, wasn't—I ask you again, wasn't the basis of the suit a contract, a copy of which has been introduced in evidence here, and is now in this record, and for services which he had rendered you in and about the purchase of the lands that he was hired by you to aid him in securing?

By Mr. WALSH.—We object to that because the complaint itself in the case referred to, and the answer therein are the best evidence of the contents thereof.

A. Why, I cannot say that it was—that it was for the purchase, because Mr. Griswold had nothing to do with the purchase of a great many of the claims; but his suit was partially for commission that he claimed he was entitled to.

Q. Well, what was the basis of his commission that would entitle him to receive the commissions according to his claim?

A. A previous agreement between himself and myself.

Q. In finding these lands which you purchased?

A. Yes, sir.

Q. Now, was there at any time, from the filing of the complaint by Mr. Griswold in that case, up to the

(Testimony of R. M. Cobban.)

settlement and discontinuance out of court of the case in which your attorney, Col. Marshall, says you paid Mr. Griswold $1,500.00, was there at any time anything said by you in your pleadings, or in your testimony that was given upon the trial of that case, in which the claim was made that you had any purpose whatever of securing these lands, for the purpose of making loans upon them?

By Mr. BICKFORD.—We object to that because the testimony is not that of any testimony that was ever given by Mr. Cobban upon the trial of the case in question. And for the further reason that it is not proper cross-examination, in that it is concerning nothing brought out by the examination in chief of this witness, and therefore it is not proper cross-examination, and upon the further ground that it is not competent for counsel to bring in any testimony given upon the trial of the case in the District Court of Missoula, unless it appears in the record here upon the direct examination of the witness, and unless it appears that the testimony given upon such trial is certified to by a properly prepared stenographer's certificate, and that the testimony was transcribed by the stenographer correctly from notes taken upon that trial. That is to say, the trial of the case in question.

By Mr. WALSH.—We object further upon the ground that the pleadings in the case properly sworn to are the best evidence of the claim made, and as to the tes-

(Testimony of R. M. Cobban.)

timony that it does not appear that Mr. Cobban gave any testimony whatever, upon the trial of the case referred to.

A. I have no recollection of any such question ever having been raised in any way, shape or manner, and I don't see how it could have been raised.

Q. Well, you have no recollection of any such claim, have you?

A. Well, I don't think any such claim as that was made; I don't know that there was any reason for ever saying anything of the kind.

Q. Well, it is not true, Mr. Cobban, that on the trial, the contract made between you and Mr. Griswold, a copy of which is exhibit "A" in this case, was the basis of the suit of Griswold against you, was admitted in evidence, and that the whole controversy hinged and turned upon the question as to how much the services rendered by Mr. Griswold in your behalf under that contract was worth?

A. Well, in the first place, I don't know that the purported contract on record here, is a copy of the contract, or any contract that existed between Mr. Griswold and myself or not. I think that the contract was —I think that that was perhaps the basis of the suit—that is, a certain contract.

By Mr. MAYNARD.—Of course I desire to say here in answer to your suggestion that we claim that exhibit "A" is a true, exact copy of the original contract,

(Testimony of R. M. Cobban.)

entered into between Mr. Griswold and Mr. Cobban, and if you question in any way whatever the correctness of the exhibit which is now of record, and has been for months, I ask you now to compare the two to find out whether there is any material difference between it and the original.

By Mr. WALSH.—You needn't mind doing that, Mr. Cobban.

By Mr. BICKFORD.—Moreover, if the counsel for the Government wishes to testify in this case, he had better be sworn by the Examiner and take the stand.

Q. And is it not true, Mr. Cobban, that the entire controversy was for services that Mr. Griswold claimed to have rendered you under and in pursuance to that contract?

A. Why, no, not the entire controversy, no, sir.

Q. Well, wasn't that the main portion of the controversy? A. I think about half of it.

Q. About half of it? A. Yes, sir.

Q. What was the other half?

A. Well, the other half was for amounts of money that he claimed that I owed him, that was shown by the production of checks, and receipts by me that he had already received—received his pay for.

Q. Well, was there any services that he claimed to have rendered that were not embraced in that contract?

A. Some.

Q. Can you name it?

(Testimony of R. M. Cobban.)

A. Why, yes, I think I could name some.

Q. Just name one for illustration.

A. Well, one item was a charge that he had made for a trip he made to Oregon for me; and that certainly wasn't in any contract—in any written contract. He also—

Q. For the Oregon case? You sent him to Oregon and paid his expenses, did you not, and he offered to furnish his services, and you pay his expenses?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and does not refer directly or indirectly to anything that was brought out in the examination in chief, and it is utterly irrelevant and immaterial as far as this case is concerned.

A. Yes, that was a case where Mr. Griswold agreed to put his time in against the expenses, under the contract, and I paid him $110.00, and then he turned around and sued me for $80 and some odd dollars that he had failed to give me credit for. I had paid him the money, but he had not given me credit for it, showing that he was trying to rob me; and if I hadn't had the check to show for it, I would probably have been held up for that the same as I was for a great many other items.

Q. I ask you if there was any claim made by you during the entire controversy that any of these lands that were purchased by you, and that were located by

(Testimony of R. M. Cobban.)

Mr. Griswold, during that entire controversy, whether there was any claim made by him at any time, whether there was anything but a purchase ever contemplated by you?

By Mr. BICKFORD.—We object to that upon the ground that it does not refer to any entry mentioned in the bill of complaint, and therefore, it is not proper cross-examination.

Q. What is your answer, Mr. Cobban?

A. Why, I don't think there was any such point made in any way, shape or manner, at that hearing.

Q. And it was with the idea of a loan, was it?

A. Well, I don't think the question was ever asked, or entered into any way, shape or manner, in the case. I don't know why it should be.

Q. Well, it was admitted on all hands that it was the purchase of lands that was considered by you?

By Mr. WALSH.—This doesn't ask the witness for anything; it doesn't ask him what was said, and it doesn't ask him if anything was said at that time, and the witness is entitled to know and understand the question that is asked him.

Q. I say, wasn't it admitted by you all the way through, that you had in mind the purchase of these lands?

By Mr. WALSH.—We object to the question upon the ground that it doesn't ask the witness for any facts at all, and he is not called upon to answer or give any re-

sponse to a question of that character. The witness is supposed to testify to facts, and the only testimony the counsel is entitled to get from this witness, is what he or his attorneys may have said, or may not have said about this matter.

Q. Very well.

By Mr. MAYNARD.—I ask that this certified copy of Mr. Cobban's testimony, that he gave on the trial of the case of Griswold vs. Cobban, at Missoula, be marked for identification by the Examiner.

By the EXAMINER.—I will mark it Exhibit No. 345.

Q. I show the witness the certificate of the official stenographer, Mr. William G. Glenny, on page No. 37 of this exhibit, and ask him to look at the same. (Paper referred to by counsel is shown to witness.)

Q. This purports to be your testimony given on that trial. The question I want to put to you is this: This is a question put to you by your attorney. You are familiar with it, and I am asking you if there was any modification of the contract between yourself and Mr. Griswold, subsequent to the execution of that contract. This is the question that was asked you by your counsel: "Q. I want to ask you about going into that contract introduced here. You are familiar with it, I will ask you if there was any modification between yourself and Griswold subsequent to the examination of that contract, and state to the Court the circum-

(Testimony of R. M. Cobban.)

stances under which it was made as regards a fixed minimum? A. There was to be no claim. I was under no obligation to take any claim that had less than six hundred thousand feet, as it was not profitable to take claims under that amount." Did you so testify?

By Mr. WALSH.—We object to this upon the ground that there is no testimony, that the instrument counsel holds in his hand, contains the testimony given by the witness upon the trial of the action of Griswold vs. Cobban referred to by counsel.

Q. What is your answer?

A. I presume I did.

Q. Was it true or not? A. That? Certainly.

Q. At that time did you have any idea of the purchase of lands, or securing it, for the purpose of making loans upon the same?

A. The proposition there was as to the purchase of timber and stone lands; that is, we were dealing very largely in lands taken up with scrip. The basis of the suit was almost entirely a suit claiming a certain amount due on certain scrip lands. There was an agreement between Mr. Griswold and myself that he should not report to me any claims that would go less than six hundred thousand to the claim.

Q. Why? Why was he not to report?

A. Because I didn't care to consider claims with any less timber on than that amount.

(Testimony of R. M. Cobban.)

Q. Well, when you started to say you didn't agree to convey, did you mean by that that you didn't agree to purchase? A. Yes, sir.

By Mr. BICKFORD.—You are referring now, are you not, Mr. Cobban, in your testimony, to this scrip land?

By the WITNESS.—I am, certainly. I had nothing to do, and it wasn't contemplated either that I was to take these lands.

Q. It was not?

A. No, sir. In other words, I wasn't to have people file on them for the purpose of conveying to me, and I didn't want to have anything to do with any lands that did not have six hundred thousand feet of timber on them.

Q. Whether that was taken up under the Stone and Timber Act, or under the lieu land scrip act, or any other act?

A. No, sir, I didn't want to purchase them, or have anything to do with lands that didn't have that amount of timber on.

Q. But if, as a matter of fact, if the claims did have more that that, then you did want to have something to do with them?

A. Not in purchasing any claims.

Q. Well, what did you want?

By Mr. BICKFORD.—Let the witness answer the question.

Q. All right.

(Testimony of R. M. Cobban.)

A. Well, I would like to know what you want to know. Put your questions as clearly as you can, and I will try to answer them.

Q. You said that you didn't want to have anything to do with lands that wouldn't carry six hundred thousand feet of timber, and I asked you if you did want anything to do with land that had more than that on it. What did you propose to do with them. What did you want to do with them?

A. Well, I was looking for land that I wanted to place scrip on, and I was looking for land that I could purchase out and out, and I was making loans to parties who were taking them up, or who were desirous of taking up claims, and I would make loans to parties when they had claims with six hundred thousand feet of timber on them, and claims that had less than that amount on were not considered good security.

Q. Then you didn't have any mind to purchase lands under this Stone and Timber Act?

A. I did to a certain extent. If the lands that were taken up in that way were offered for sale eventually, I certainly expected that if I was in the market at that time, to buy them, if I would have an opportunity to do so.

Q. Isn't it true, that it was utterly immaterial to you, if the price was right, and the quality of the timber was right, as to whether it was taken up under one act of Congress or another?

A. Why, I had nothing to do with any timber and

(Testimony of R. M. Cobban.)

stone claim—the purchase of any timber and stone claim before final proof was made—before they were proved up on.

Q. Can you answer my question, Mr. Cobban?

A. It made no difference after a man had the right to sell, what act it was taken up under. If any land was offered to me for sale, it made no difference to me what the act was that it was taken up under.

Q. It was the timber you wanted. If you got that at the right price?

A. Yes, sir, and got it legally.

Q. You were asked this question, Mr. Cobban?

By Mr. BICKFORD.—We wish to have it thoroughly understood that we object to all of this testimony, and the examination of this witness, concerning any of the matters testified to upon the hearing before the referee, in the case of Griswold vs. Cobban, upon the ground that it is not proper cross-examination, and further, it has already been gone over by counsel for the Government.

Q. "Under this contract, Mr. Cobban, what was it understood Mr. Griswold was to do in perfecting the obligation under that contract?" That question was asked you, Mr. Cobban, on the hearing, and you answered: "A. He was to point out these lands, show it to us, to be of other assistance, furnish a list of the timber, anything his commission involved, anything affecting a claim."—Was that true?

A. That was true, yes, sir.

(Testimony of R. M. Cobban.)

Q. You were also asked this question: "Was it understood that he was to make a personal inspection and furnish you with an estimate of the quantity of timber on these several tracts, in order that you might determine whether you would buy it?" To which you answered: "It was necessary for him to do so; I could not act intelligently without his doing so." Was that answer true or false?

A. Well, it was to a certain extent; it was true. It was in general way, it was true, and yet, Mr. Griswold was allowed and paid a commission on many claims that I don't think he ever saw; so that the conditions were somewhat changed there in that respect.

Q. It was true in a sense, you say?

A. Yes, sir.

Q. You were also asked: "It is a fact, I take it, from other circumstances, that Griswold did employ some other persons to make some estimates, and examination of lands under the contract?" To which you answered: "Yes, sir." A. Yes, sir.

Q. And the further question was asked you: "State whether or not Mr. Jemison was one of these persons? A. That assisted Mr. Griswold? Yes, sir."

Q. Were those answers true, Mr. Cobban?

A. Yes, I think you will find some modifications there that Mr. Jemison did for a certain length of time. I think it discloses that fact.

Q. You were also asked the following question: "For this assistance of Griswold, you may state whether or

(Testimony of R. M. Cobban.)

not you paid him on the order of Griswold? A. I did." Was that true, Mr. Cobban? A. Yes, sir.

Q. Then comes your suggestion, Mr. Cobban: "Is it not a fact that Mr. Jemison made some selections independent of arrangements with Griswold?" To which you answered: "He did." And then the question: "Did you pay for them yourself?" And you say in answer thereto; "I did." Was that true? A. Yes, sir.

By Mr. BICKFORD.—Now, if your Honor please, we want to interpose an objection to counsel reading this testimony. He has already introduced it in evidence, and it has been marked by your Honor as an exhibit in this case; it becomes a part of the record in this case, and it is unnecessary enlarging and encumbering the already voluminous record in this case, and is compelling us to pay for a large amount of typewriting and stenographic work when the stuff that he is now reading is already in evidence. He can call the attention of the witness to the testimony given, and if there is any discrepancy between the testimony given by the witness upon that occasion and in this case, he can call his attention to it, and ask him to explain it, and examine him upon that matter.

It is also manifestly unfair to read a part of the testimony to the witness, and not read all of it. The witness is entitled to have enough of the record read to him to enable him to fully understand the questions propounded to him; and we shall ask now that counsel, having introduced it in evidence, may be called upon

(Testimony of R. M. Cobban.)

by the Examiner not to read the testimony into the record here at this time.

By Mr. MAYNARD.—In reply I desire to say that I am only too anxious to comply with request of my brother, Judge Bickford. If it can be pointed out in any way how I can get the benefit of this testimony that Mr. Cobban gave in the civil suit brought against him by Mr. Griswold, without calling his attention particularly to it, and asking him whether it was true or not, or whether the stenographer made a mistake in transcribing it, I shall be only too glad to do so, because it is a long document, and we don't want to go into it if we can possibly avoid it.

Now, if counsel will admit that this testimony may be received in evidence, and that I may have the same benefit of this testimony, that Mr. Cobban gave, without calling his attention to it, I shall be only too glad to accept that kindness.

By Mr. WALSH.—There is something more than nine-tenths of that document that you hold in your hand that has absolutely nothing whatever to do with the matter that is under inquiry here. There is so much of it that has nothing at all to do with the matter under investigation here, and it seems to us that it ought not to be read into the record, and thus swell the already voluminous record, when it can serve no useful purpose.

Now, if there is any portion of it concerning which you desire to cross-examine the witness, you ought to

(Testimony of R. M. Cobban.)

do that, but the document as a whole is no proper cross-examination of the witness; and to start in at the top of that testimony and ask the witness whether or not he testified to certain matters therein, and going clear through the document without any reference to its materiality, is simply an abuse of the privilege of counsel, and it ought not to be done.

By Mr. BICKFORD.—And further, the matter has already been inquired of fully. It is not proper cross-examination at this time, the time within which counsel has to cross-examine the witness having already long since expired.

By Mr. MAYNARD.—I don't want to do that myself. As I said before, if this may be received in evidence, and you will hereafter stipulate on the record that I may use so much of it as is pertinent to this case, why we will stop right here.

By Mr. WALSH.—We cannot possibly permit the whole thing to go in, and become a part of the record, and you afterwards to claim that it is a part of the record, without giving he witness an opportunity to explain the testimony there given, after a full understanding of it.

By Mr. BICKFORD.—We have no objection whatever to your asking about these matters, but we do not think it proper for you to go through this whole document and ask the witness if he did not swear so an so.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—That is just what I was trying to do; to ask him about particular matters that he swore to. I don't desire to go through this whole thing, and ask him with reference to all the questions.

By Mr. WALSH.—But that is the very thing you were doing.

By Mr. BICKFORD.—Counsel for the Government forgets that the document which he now holds in his hands has never been submitted to us for examination, and that it is just now brought to the attention of the witness for the first time. Counsel has never seen it, and never even had an opportunity to examine it, to ascertain whether it has anything whatever to do with the controversy here, and consequently we cannot off-hand admit that this is a correct transcript of the testimony, or a transcript of any testimony, or that it is testimony that was ever given at any time, or under any circumstances.

It is a long record purporting to come from somewhere, and it has never been seen by counsel for the defendant in this case, and at any rate, it is not competent testimony in this case, and is not at all binding upon the defendant in this case, whatever may be said of its materiality. And it is not proper cross-examination, and it is not proper to now submit this to the witness, and ask him if he did not swear so and so upon that occasion, when, as a matter of fact, he was never inquired of concerning it in his examination in chief. It

(Testimony of R. M. Cobban.)

is a question at any rate that the court will have to pass upon; and on the whole we do not think it proper for counsel to examine the witness in this manner with reference to the paper now in his hands. We insist that it has nothing whatever to do with the issues in this case, and it is not proper cross-examination, the witness never having been interrogated with reference to it upon his direct examination.

By Mr. MAYNARD.—I desire to say in answer to my brother Bickford, that I will leave this with the Examiner, of course, and it is open to counsel for the defendant to make copies of it, or to inspect it, or do anything they like with it. It is now a part of the record in this case, and they can have it all night, and for weeks and months if they desire to.

By Mr. WALSH.—The reason for objecting to this is that it is not proper cross-examination of the witness, and it is not proper as rebuttal testimony. The time within which counsel for the Government has to cross-examine the witness has long since expired.

By the EXAMINER.—Well, I really inferred from the way in which counsel was conducting this matter, that this was really rebuttal, or intended to be rebuttal.

By Mr. BICKFORD.—Well, the fact is, the record shows that the witness was recalled for further examination.

By Mr. MAYNARD.—He was recalled, and then the

(Testimony of R. M. Cobban.)

statement was made when he was on the witness stand, that there were probably matters about which he was not interrogated, and which I had overlooked, that I would want to question him about later.

By Mr. BICKFORD.—This is not rebuttal testimony.

By Mr. MAYNARD.—As I say I want to use this testimony and I want to save time, and not only that; I would like to facilitate it, and accommodate my brethren as much as possible. What I have to say is this if you will just give me time, I will try hereafter to use as little time as possible, and facilitate matters all I possibly can.

By Mr. WALSH.—Well, we understand that all of these matters have already been gone into upon the cross-examination of the witness upon the stand.

By Mr. MAYNARD.—As I said before, if counsel will point it out to me in the record, and show me where the witness has been asked about these matters, I am willing to drop it right now.

By Mr. WALSH.—We do not concede it to be our duty to point out to counsel the ground that he has covered; we think it is his duty to know it.

Q. You were asked, Mr. Cobban, this question: "Griswold had no connection whatever with these several claims Jemison located at your instance and request?" And you answered: "He had nothing to do

(Testimony of R. M. Cobban.)

with them so far as I am concerned." Did you not so testify? A. Yes, I think I did.

Q. Was that true, Mr. Cobban?

A. Yes, sir.

Q. You were also asked this question: "You were on the Bruner claim, what about that?" To which you answered: "This was reported to me by Griswold. It was a claim not purchased, as it was considered the purchase price was in excess of the value, and it never came into my possession."

By Mr. WALSH.—We object to all this testimony and especially to the reference to the Bruner claim for the reason that it is not one of the claims mentioned in the bill of complaint herein, and it is not one of the claims concerning which the witness was examined in his examination in chief, and it is wholly irrelevant and immaterial to any issue in this case, and it does not relate in any manner to any claim in controversy, and it is not proper cross-examination of this witness, and it is not proper rebuttal testimony.

Q. You continued in your answer as follows: "Under our agreement he was not to have pay unless the timber did come into my possession." The next is that of C. Moss; this was a claim that Mr. Griswold made appointment to show Charles Dorman and Moss some claims, giving me description of lands. I think it is on section six; he told me at least there were some claims on a certain section, and he would meet myself, and

(Testimony of R. M. Cobban.)

these parties on the Clearwater on such a day and made an appointment with us to show us these claims. We went there, and Mr. Griswold did not show up. I went with Mr. Dormer on the ground, having spent a day there. I finally selected a claim. I allowed Griswold the Dorman claim; he had nothing to do with it except to tell us there was one there. Mr. Moss wasn't able to go onto that ground at all. After considerable hunting around another claim was found for him. We knew nothing about whether it would stand up to the estimate. Mr. Griswold did not have anything to do with it; he never had anything to do with it in the world. When I settled with him for the Dorman claim that was fully discussed at the time, and he made no claim to it." Mr. Cobban, did you not so testify?

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination, and relating to matter that is entirely irrelevant and immaterial to any of the issues in this case.

By Mr. BICKFORD.—And further, it isn't proper rebuttal testimony, if it is intended as rebuttal testimony, and does not rebut any testimony that has been introduced by the defendant in this case.

Q. Was that testimony true, Mr. Cobban?

A. Yes, sir, I think it was, except as to one thing there that I noticed that might be misleading. I said in there that Mr. Moss wasn't able to go onto the claim. It might be understood there that he didn't go onto

(Testimony of R. M. Cobban.)

the Dorman claim, as he did; but he didn't go onto the claim. There was another claim on the same section that might have been taken.

Q. Is the Moss and the Dorman that is referred to by you in this testimony, the Moss and Dorman that are named in the bill of complaint?

A. Mr. Dorman isn't named in the bill of complaint. I think that Mr. Moss is.

Q. At that time when you were doing this work that you have testified to, was this done for the purpose of purchasing the timber, or was it done for the purpose of aiding them in making locations in consideration of their paying you a hundred dollars?

A. It was made in consideration of their paying me a hundred dollars, for that service as heretofore stated.

Q. And you didn't have in mind at the time the purchase of the lands located by them?

A. I had no agreement with the parties in any way, shape or manner, and no talk, or any contemplation with these parties that I would purchase their claims. That I may have thought sometime when these claims were proved up on, that I might have an opportunity to buy them, I might have had that in mind; but I certainly had no agreement with them as to buying their claims of them, and no arrangement in any way, shape or manner of that kind. And I didn't know that I would be in the market for the purchase of claims when those claims were proved up on.

(Testimony of R. M. Cobban.)

Q. When you say that you were desirous of purchasing some timber lands—purchasing lands like these, and as a matter of fact, you did purchase them, as the record shows, how are you able to say that you had no such intention in mind and that it was for the purpose of locating them, and receiving a hundred dollars for your services?

A. For the further reason that I was desirous of purchasing lands under the scrip act, if I could get it. I wasn't desirous of purchasing lands thirty, or sixty, or ninety days ahead.

Q. You were not?

A. No, sir, it was very seldom—I sometimes took options; that would give me a chance to buy possibly thirty days ahead, but the idea was that I could take —I was anxious to buy scrip lands, or lands that were proven up on—lands that were taken up under the Stone and Timber Act. And I never knew sixty days ahead whether I would be in the market to purchase lands or not.

Q. And your purpose, then, and intention was, when you went with these men as you testified, up into the country, was to do the work as you did, and they were to pay you a hundred dollars for your services?

A. Yes, sir.

Q. Now, continuing with your answer given in the hearing in Missoula: "The next four claims, D. L. Chattin, J. Saleen, J. S. Deering, and C. C. Snyder, were in the same vicinity; in fact, they were four of them on

(Testimony of R. M. Cobban.)

section ten, and Snyder on section two, adjoining each other. Mr. Griswold was requested by me, in fact, he acted partly on his own judgment, in going into certain townships to show a claim. Mr. Griswold went into this district and reported no timber worth taking there; that the timber was not worth taking. Later on I was informed by other parties it was worth taking, and Mr. Sparks, who was working for me, went to see in that vicinity." Did you so testify, Mr. Cobban?

A. I think I did.

Q. Was that true?

A. I have every reason to think that it was true.

Q. When you used the words, "The timber was not worth taking," did you have in mind then the purchase of the timber, or the making of a loan?

A. I had neither. I meant by that there was not sufficient timber there to make the land of value for any purpose—for taking under any act of Congress, or locating the scrip or under any other act.

Q. You recognize, Mr. Cobban, the names of D. L. Chattin, J. Saleen, J. L. Deering, and C. C. Snyder, as four persons who are named in the bill of complaint, and from whom you did purchase claims?

A. I do.

Q. And at the time that you were testifying in regard to these claims as to the services that were rendered you at that time, although you bought them, you had no intention of buying from them as I understand you?

(Testimony of R. M. Cobban.)

A. No, sir, there was no arrangement in any way, shape or manner, that I should buy.

Q. Continuing in your answer, Mr. Cobban, you said: "Later, I was informed by other parties, it was worth taking; and Mr. Sparks, who was working for me, went to see in that vicinity. I requested him to look that ground over. He did so and on Mr. Sparks' estimate and opinion, I told people where they could get these claims." Was that true?

A. That was true to a certain extent.

Q. I beg your pardon. Did you so testify?

A. I did.

Q. Was that true?

A. A portion of it was. As I explained heretofore in regard to Mr. Sparks working for me, he was working for me as I stated heretofore; not working directly for me, but I had borrowed him for that purpose. The balance of that is true.

Q. What do you mean by the words, "I told people where they could get these claims"?

A. Just as I gave it in my direct testimony here. Those people came to me to see whether I could tell them where they could get locations, and I did, and arrangements were entered into by which they were to pay me for my services, and in some instances, where I was to make loans.

Q. Continuing in your answer you said: "Mr. Griswold did not have anything to do with these. In settling our claims, Mr. Griswold did not claim these.

(Testimony of R. M. Cobban.)

The claims of M. P. Dunham and F. B. Arey were in the same vicinity in the same township, a little further west. Mr. Griswold claimed it was not valuable. Griswold had nothing to do with it; and in our settlement they were cut out. The next claim of D. McGillis was in the same shape. That claim, I think, was shown by Mr. Stephen Tepper. Mr. Griswold never gave me anything of these claims—no estimate or report in any way, other than as I say, that they were all of no value, no statement of the quantity of timber, or that there was such claims there of any value." Did you not so testify? A. I think that was my statement.

Q. Was that true? A. I think it was.

Q. Now, wasn't it true, Mr. Cobban, that Mr. Griswold in that connection said they were of no value for the purpose of buying because of the fact that they were inaccessible, that it was so difficult to get at the timber, that it wouldn't be worth it to you, didn't he so report? A. No, sir.

Q. The following question was asked of you, Mr. Cobban: "Many of them below 600,000 value?" To which you answered: "Yes, sir, there is a number of them in this list that is below the estimate I wanted." The next two claims, E. M. Hardy and J. H. Hardy, these were claims that I was particularly anxious should be good claims. I spoke to Jemison, he was in my employ, and asked him if he was in the employ of" (then there is a dash, and an objection by counsel)—"claimed at that time that I was infringing on Griswold,

(Testimony of R. M. Cobban.)

and as I did not want to step in Griswold's way, in any way, Mr. Jemison told me it would not, that he had no contract with Griswold, and that Griswold told him he would pay him a certain amount for claims." Did you so testify? A. Yes, sir, I think so.

Q. Was that not true?

A. I wish you would read that question over again.

(Question repeated to the witness.)

By Mr. BICKFORD.—We move to strike out the question just put to the witness, and especially the portion of it that is read by counsel, as not being proper cross-examination, and for the further reason that it does not appear to be a complete report of the testimony given by the witness at the time, and because, as read by counsel it appears to be a mutilated and imperfect report.

By Mr. MAYNARD.—I would say in answer to my friend that I am reading the testimony just as it is in this document. I have no desire to misrepresent anything.

By Mr. BICKFORD.—And for that reason I make the objection. There seems to be some words left out from the way it reads.

Q. What I mean is, Mr. Cobban, confining your answer to this particular question: "Claimed at that time that I was enfringing on Griswold, and that I did not

(Testimony of R. M. Cobban.)

want to step in Griswold's way in any way." Did you so testify? A. I think so.

Q. Well, what did you mean by that?

A. I meant simply this, that I had made arrangements with Mr. Griswold to look up timber lands for me. The main object, and the main thing in my mind at the time was, that Mr. Griswold was reporting on timber lands, and I had the expectation of completing their purchase by scrip largely. That was the expectation that was in my mind, increasing my holdings by scrip. Consequently the reporting of lands that were proved up on, that people had title to, that was my object.

Q. That was what you had in contemplation at that time, do you mean?

A. Yes, in a way, there was no contemplation at that time, but in a vague sort of way. Mr. Griswold spoke of one or two of his friends, or some parties that would want to take up some timber and stone claims—that he thought would want to take up timber and stone claims, and it was contemplated that if any of those claims were ever taken up, they might pass into my hands, and it was positively talked of, that there should be no arrangement in any way made with any parties to purchase any claims. But in the taking up—in the locating of some of those people in there he was to charge them a certain amount for locating them. But if any of those claims did ever come into my hands

(Testimony of R. M. Cobban.)

he was to receive a five per cent commission the same as he would on the scrip lands, and on the lands that were patented.

Q. I see.

A. But there was no contemplation in any way of entering into any arrangement with any person by which we were to purchase them.

Q. Now, Mr. Cobban, when you say that Mr. Griswold spoke to you about some friends that he had that he would like to locate and take up lands under the Stone and Timber Act, didn't he say to you anything about how they were to get the money to pay for them?

A. No, sir, not at that time.

Q. But that the arrangement that you made with him was, that if, as the result of their location, and the taking up of timber lands, by them, that ultimately he was to get title to them, he was to be paid his commission of five per cent, the same as if it was taken up under the scrip act?

A. Any lands that passed into my possession up there, that he had reported to me, or that he had in any way pointed their general location. For instance, in the Blackfoot country, I paid Mr. Griswold a commission on everything that I bought in that upper Blackfoot country, notwithstanding the fact that Mr. Griswold had never probably even talked with a good many of these people, and had never reported to me directly that some of those claims could be purchased, or anything of that kind, but they eventually came into

(Testimony of R. M. Cobban.)

my hands, and because of that fact, and the fact that he was familiar with that tract of country in there, I gave him the benefit of them all.

Q. Did he tell you, Mr. Cobban, how many of his friends he would be likely to have who desired to locate lands under the Stone and Timber Act?

A. There was never any contemplation of any particular number that were coming to me. But if he ever located any parties under the Stone and Timber Act on that land, which land eventually came into my hands, he was to receive his commission. Later on—there was not at that time, during the first conversation, it was not clearly in my mind to charge a hundred dollars apiece. Later that matter came in, and it was expected after that, and Mr. Griswold and myself had a conversation to that effect—that he was to receive his commission wherever I bought land of parties that he had located or sent to me, located when I made this charge, then Mr. Griswold was to have his commission anyway, because that was a part of the hundred dollars that I was to get from these people.

Q. Well, now, when you used the words, "I did not want to step in Mr. Griswold's way, in any way," or infringe on him, what did you mean by that, that he had a certain territory that he had a right to?

A. No, not definitely fixed by bounds. Mr. Griswold was generally locating up in the Blackfoot country, and reporting to me on lands in the upper Blackfoot country. The lower Blackfoot country, being

(Testimony of R. M. Cobban.)

nearer to Missoula, I had a better chance to look up those lands probably than he did, and he was to confine himself more particularly to the upper Blackfoot country.

Q. Could you tell me how large the area of that country was that you assigned to Mr. Griswold?

A. There was no particular boundary to it, but he in a general way looked over a country I suppose thirty miles in length, possibly forty.

Q. A country thirty or forty miles in length?

A. Yes, sir.

Q. And, as I understand you, at no time, when he states that he had some friends that he might want to locate on claims under the Stone and Timber Act, was it done by your consent, or under your direction, but it was done solely by way of instructions to him, and he was so to locate them, and authorize him to pay all the expenses, and pay for the entering of the land, and that they were to receive a hundred dollars and their expenses. Nothing of that kind was suggested by you?

A. Well, you have got a good many questions in there, and I won't attempt to answer it, except by saying that there certainly were no instructions by which he was to make any agreement with any person, by which they were to sell their claims to me.

Q. But your theory is—how did you expect ultimately that they would come into your possession?

By Mr. BICKFORD.—We object to that upon the

(Testimony of R. M. Cobban.)

ground that the witness has not testified that he had any theory that these lands would come into his possession, but on the other hand, he testifies positively that there was to be made no agreement with any person, by which they were to sell the lands to him after final proof was made.

Q. I ask you this question, Mr. Cobban: How did you expect that they might ultimately come into your possession?

A. Well, in a great many cases I didn't expect those claims—I had no reason to think that they would come into my possession. I didn't know that they would come into my possession; but, as I stated before in regard to some of those claims, I told Mr. Griswold, that if any of those claims were purchased by me, that I would pay him his commission the same as if the lands came into my possession under the lieu land act, the same as if I had purchased them under any other acts.

Q. Mr. Cobban, can you tell me one specific case where the locations were so made by Mr. Griswold, and people placed on them by him, and the timber was approved by you, that it didn't ultimately come into your possession?

A. Why, I know of a great many claims that were taken up in that district that did not come into my possession, but I have not the slightest doubt but that if I had purchased them, Mr. Griswold would have received his commission just exactly the same as in all other

(Testimony of R. M. Cobban.)

cases where I had purchased them, had I purchased them.

Q. You are reported to have testified as follows, Mr. Cobban: "I told Jemison I would pay so much for each of these claims, if he found claims for those parties. He found them, and I paid Jemison for them." Is that true? A. Yes, sir, I think so.

Q. Did you so testify?

By Mr. BICKFORD.—Wait a moment, I want to see this testimony before and after that read by counsel, and see if it isn't explanatory of the testimony read by counsel. (Paper from which Mr. Maynard was reading, handed to Mr. Bickford, examined by him, and returned to counsel for the Government.)

Q. Did you so testify?

A. Well, I presume I did.

Q. Was that true?

A. Well, at this time I don't know what claims that referred to.

Q. You don't know what claims that referred to?

A. No, I do not, but it was probably clear in my mind at that time just what claims were referred to, but I don't know now.

Q. Do you know whether you had in mind, that you were paying for these claims—that you were paying Mr. Jemison for locating people under your mortgage theory, or under the contract—your desire to obtain the land?

(Testimony of R. M. Cobban.)

A. I paid him entirely. I paid him for his services entirely under the mortgage proposition, not for the purpose of purchasing the claims. In some instances I was instructed by parties to make the payments to—to have Mr. Jemison find claims for them, and did this simply for these parties.

Q. Very well, can you mention one case where the services were rendered by Jemison, where it resulted in a mortgage being given?

A. No, I don't know that there was.

Q. You don't know that there was such a case?

A. No, I don't recall one now.

Q. Is it not true that in each and every case the contrary took place, and that they did sell to you?

A. So far as I know, yes, sir.

Q. I call your attention to testimony that appears on page five of exhibit No. 345, to which I have heretofore referred, and particularly to the following question: "He was excluded from certain territory." To which you answered: "Yes, sir, the Kilbourn claim was practically in that territory from which he was excluded." The next claim was a claim of Combie, 855,000 feet. This was a claim that the purchase price was so high I could not afford to buy that, and pay him a commission of five cents. However, it was agreed at that time that $25.00 was to be the amount that Griswold was to get for that in full settlement, and acknowledge that, and it was thoroughly stated to him at that time." Was that purchased under the Stone

(Testimony of R. M. Cobban.)

and Timber Act, or under the scrip act, or how was it purchased?

By Mr. BICKFORD.—We object to that question upon the ground that there is nothing in the bill of complaint in this case concerning any Combie claim. It is not relevant to any issue in this case, and it is not proper cross-examination of the witness, and refers to nothing that was brought out on the examination in chief of this witness.

By Mr. MAYNARD.—That is the reason why I asked him if it was under the Stone and Timber Act, or if it was under the Scrip Act, or what act it was under?

By Mr. BICKFORD.—It wouldn't make any difference under what act it was, no claim having been made in the bill of complaint whatever with reference to the Combie claim.

A. I think that was a commuted homestead, if I am not mistaken. Yes, I think it was a commuted homestead, and the agreement to pay Mr. Griswold, and the agreement to purchase the claim, was made after final proof was made, and when the man had a good right to sell his claim.

Q. Referring again to this exhibit, your answer on page 6, in part is: "The next one is the J. B. Selly claim. That is another claim on which the purchase price was so high that I could not afford to buy and pay Griswold a full commission. I could not pay him five

(Testimony of R. M. Cobban.)

cents per thousand for the timber, and it was by a special agreement that he consented to take one-half of the regular commission." Was under the Stone and Timber Act, Mr. Cobban?

A. Yes, that claim was taken up under the Stone and Timber Act, but it was a claim that Mr. Griswold had nothing whatever to do with in any way. It was in the territory, as I explained a few minutes ago, up near Ovando. I think Mr. Griswold had called my attention to the fact that Mr. Selly had a timber claim—a stone and timber claim—and I was fully advised of what the claim was from the records that I was keeping in my office, and when Mr. Selly had a right to sell his claim, and set a price on it, I felt in honor bound to pay Mr. Griswold unless it came under this special agreement to pay him five per cent for anything in that district that he might even have told me about. And therefore, I wouldn't purchase it until I had seen Mr. Griswold and he had consented to take one-half of that amount.

Q. Continuing with your answer on page 6 of the exhibit the next three claims, W. J. Eddy, L. J. Gilman, and R. M. Jemison. These were three claims that run below the estimate of 600,000 feet to the claim, and were left out in our settlement by mutual agreement. Mr. Griswold stated at the time that he did not want pay for anything that did not come up to the amount that was agreed upon." Do you recognize those three

(Testimony of R. M. Cobban.)

entrymen as those that are named in the bill of complaint?

A. I do. That is, I think they are all named in the bill of complaint.

Q. These three claims made by W. J. Eddy, L. J. Gilman, and R. M. Jemison, were they under the purchase price theory, or under the mortgage theory?

By Mr. WALSH.—We object to that as not asking any fact from the witness at all. You needn't mind answering that question, Mr. Cobban.

Q. Were these located under the agreement that they were to mortgage to you, or were they not to sell to you, Mr. Cobban?

A. Those were made under the agreement that they were to mortgage to me.

Q. And Mr. Griswold so understood it?

A. Yes, sir, he did.

Q. Do you mean to say that you ever in your life, ever said a word to him, at any time, to the effect that he was to do anything except to locate these people for you, in order that you might obtain the lands?

A. Well, I don't mean to say that I did make any such statement to him. There certainly was never any agreement that I should take those lands—that I should buy the lands, and he certainly knew fully that these people were to pay me for the locating of these lands, and that they were to borrow money from me for the purpose of proving up. And there certainly

(Testimony of R. M. Cobban.)

was no agreement that they would convey the lands to me; and there was certainly positive instructions given to Mr. Griswold repeatedly that there could be no such thing held out to any person that we would buy the claims.

Q. Well, you say that these were claims that ran below the estimate of 600,000 feet; were they to pay you for locating these claims?

A. They were to pay me a hundred dollars. At the same time these claims were purchased without an estimate other than Mr. Griswold's own estimate, and when these claims were purchased by me Mr. Griswold said they were good claims and I bought them upon Mr. Griswold's statement that the claims were good claims. But when they were estimated by a cruiser, they were found to be very much lower than what we had expected.

Q. Was that before or after you had made the purchase?

A. That was after I had made the purchase. That was the reason why Mr. Griswold wasn't to receive any pay for this because he had misrepresented to me the amount of timber on the claims. Had I known that there was only that amount of timber I should never have made that loan, nor should I have purchased the claims. But I relied on the information furnished to me by Mr. Griswold that they were good claims, and upon that statement I agreed to loan them the money

(Testimony of R. M. Cobban.)

in the first place, and afterwards I purchased the claims of them.

Q. I think you have already testified as to the circumstances of your purchase of these claims, have you not? A. I presume I have, yes, sir.

Thereupon an adjournment was taken until ten o'clock A. M. August 13th, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

R. M. COBBAN, recalled by complainant for further cross-examination.

(By Mr. MAYNARD.)

Q. Continuing in your answer, Mr. Cobban, reading from page 6 of your testimony: "The next four claims, Norman Newell, W. Miller, S. C. F. Cobban and O. C. Clark, were located by Mr. Jemison at my request, and I paid him for them with the understanding, as in the former cases, that I was not in any way infringing on Mr. Griswold."

Mr. BICKFORD.—We move to strike out the statement read by counsel for the reason that it is irrelevant and immaterial and is not proper cross-examination and is not proper rebuttal testimony, and for the further reason that the claims mentioned in the statement read by counsel are none of the claims mentioned in the bill of complaint filed herein, and are therefore irrelevant and immaterial for any purpose.

Q. Mr. Cobban, did you so testify?

(Testimony of R. M. Cobban.)

A. I think I may have done so.

Q. Was that testimony true?

A. Well, it was true in a way; I paid him for his services; I didn't pay him for those claims, but I paid him for services in reporting those claims, yes, sir.

Q. How did you come to request Mr. Jemison to locate those claims?

A. Mr. Clark requested me to look him up a claim or have a claim looked up, as also S. C. F. Cobban, and the other parties, I think, came to me after having found their claims and made arrangements with me for their loans, and then afterwards Jemison came in and said that he had found those for them, after they had proven up, and he was paid for them.

Q. All four of these claims were under the Stone and Timber Act, were they not?

A. Yes, sir, they were.

Q. Did you request Mr. Jemison in these four cases to make these locations for these four men in order that you might get one hundred dollars by way of services in locating them? A. No, sir.

Q. You did not?

A. Not in the S. C. F. Cobban or the Rev. O. C. Clark claim.

Q. Why not?

A. For the very reason that they requested me to have these claims found for them, and there was no agreement that I should charge them anything, only just what I paid out for them. I had no agreement with

(Testimony of R. M. Cobban.)

those people; they simply asked me to have some claims found for them and I did so.

Q. And you didn't charge them anything?

A. Yes, sir.

Q. How much did you charge them?

A. I charged them just what Mr. Jemison charged me.

Q. Did they give you a mortgage or note, either of them?

A. I did not furnish the money for either of them.

Q. You did not? A. No, sir.

Q. Mr. S. C. F. Cobban's testimony as to the transaction appears in the record in this case, I believe; do you remember his testimony? A. Yes, sir.

Q. He testified here in the case?

A. Yes, sir, he did.

Q. Mr. Clark conveyed to you, did he not?

A. He did.

Q. How much did you pay him over and above the purchase price of the land?

A. I don't know what I paid Mr. Clark.

Q. Why?

A. Because I haven't taxed my memory; I don't remember just what it was. I think I paid him somewhere about eight hundred dollars for his claim; that is my recollection.

Q. Where does he live?

A. He lives in Springfield, Illinoins.

Q. Is he any relation to you? A. No, sir.

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—We object to all of this as irrelevant, immaterial and incompetent.

Q. What was he doing out here?

A. He was a Congregational Minister at Missoula, Montana, at that time.

Q. There was no arrangement made in any way with him by which he was to convey to you?

A. There certainly was not.

Q. How long a time after, do you remember, that he conveyed to you, after final proof?

A. Well, somewhere I should judge about thirty days.

Q. Was he here in the State at the time?

A. Yes, sir, he was living at Missoula. I don't remember whether the deed was executed in Montana or California.

Q. That is, if it was executed in California, he was at that time in California and it was sent on for execution?

A. Mrs. Clark was in California; she had poor health, and Mr. Clark went to California, I think, to bring her back home, and I am not certain whether that deed was executed while they were in California or at Missoula. My impression is that it was made at Missoula and he sent it on for her signature in California.

Q. You don't know how much you paid him?

A. I don't remember the exact amount.

Q. Now, you further testified: "The four forties in twenty-two—thirteen—seventeen, unsurveyed land, was

(Testimony of R. M. Cobban.)

in a territory that Mr. Griswold had nothing to do with. Further I employed one, Harrison Dodd, to look up that timber for me; and paid him for it. The next item, fifteen forties in fourteen—thirteen—seventeen—I went personally on that ground with Mr. Harrison Dodd and looked over that ground before selecting it. Mr. Griswold never had anything to do with it in any shape or manner. I employed Harrison Dodd to show me these lands and paid him in full for it; it was in a territory that Griswold had nothing to do with in the first place, and never reported anything in any way, shape or manner to me." Did you so testify?

A. I think I did.

Q. Was that true? A. Yes, sir.

Q. Do you remember the persons that were located on these descriptions of land that I have mentioned, where you were aided by Harrison Dodd?

A. Those were all scrip lands.

Q. All scrip lands? A. Yes, sir.

Q. How long was Harrison Dodd in your employ?

A. Well, that is a very hard question to answer. He was not regularly in my employ, only in this way, that he was familiar with that section of the country right here where he lived, and was to look over a certain amount of territory and report to me, and if I located and used his—if I scripped those lands I was to pay him so much a forty for it, I have forgotten just what it was, but something like five or ten dollars a forty, and that is the way that he was in my employ.

(Testimony of R. M. Cobban.)

He was not working by the day for me, except on one trip he made to report on some timber land, some special land that I wanted a report on, and then he was paid by the day.

Q. Did he aid you in finding land that was taken up under the Stone and Timber Act?

A. He did not.

Q. At no time? A. No, sir.

Q. Further, in your testimony you said: "I sent Mr. Griswold into the Gold Creek territory, in my territory, and all of these items he has reported there, he has received credit in full on my books. There were quite a good many claims he had located when I sent him in to locate; that was in my territory, and I sent him in there to make an examination." Did you so testify?

A. I presume so. I don't know whether that is a correct statement or not.

Q. Are you prepared to say that it is not?

A. No, sir.

Q. If it is true, for what purpose did you send him there. You sent him in there to make an examination for what purpose?

A. I sent him in there to make an examination and report to me about what amount of timber there was on the different forties of ground.

Q. The question was asked you by your counsel: "I will ask you, Mr. Cobban, if Mr. Griswold was in from time to time and furnished a statement of the land for which he was given credit under the contract?" And

(Testimony of R. M. Cobban.)

you answered; "Every time I made a sale of timber to W. A. Clark, and I made a number of them, I would make a statement to Griswold and he would come in the office and we would check up what lands Griswold was entitled to pay for at that time, and we would figure up the number of feet and an entry would be made on the books; there were several such settlements." Did you so testify?

A. I presume so.

Q. Is that true or false?

A. It was in the main correct.

Q. Your attention was called—proceeding further—"Look at the statement marked statement A, and the statement marked B." Do you remember seeing those statements handed to you at the time by your counsel?

A. Yes, sir.

Q. Do you know where they are now?

A. I do not.

Q. You have not got them?

A. I don't think I have them; I may have them, but I don't know that I have.

Q. Will you produce them?

A. Well, I don't know that I have them. I think there is a copy of them in the papers that were handed to Judge Blake yesterday.

Q. Those are statements that preceded the final statement?

A. They were copied into the final statement.

Q. On page 10 of your testimony, you were asked by

(Testimony of R. M. Cobban.)

your counsel: "Did you have a conversation with Griswold about Jakways and this twenty dollar item? A. No, sir, I never did; it was never disputed. Q. You paid that amount? A. Yes, I paid that amount. Q. State to the Court in what way you came to pay it? A. I had an account with Jakways previous to that time. Mr. Griswold had got money there, there being at one time an order on me for one hundred dollars. Oftentimes people working for me would run short of money and would ask these people, and I paid it when the bill was presented." Did you so testify?

A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. On page 13 you were asked: "Mr. Cobban, look at that contract, exhibit "A," and say whether you signed that contract. A. Yes, sir. Q. You signed it? A. Yes, sir. Q. Under that contract did Mr. Griswold go to work for you about May, 1899? A. He went to work under the conditions of the contract. Q. You say that subsequent to the execution of this contract there was a modification of it? A. To a certain extent, yes, sir." Did you so testify?

A. I did.

Q. Do you know where that contract that was marked exhibit "A" is now?

A. I believe it is in the possession of Judge Blake.

Q. You were asked: "You say that subsequent to the execution of this contract there was a modification of it? A. To a certain extent, yes, sir. Q. When was

(Testimony of R. M. Cobban.)

that? A. I am not certain; at the time the contract was drawn or shortly afterwards. Q. Where was it made, here in Missoula? A. It was a proposition spoken of in regard to timber on claims; it was spoken of repeatedly, at various times. Q. The modification of the contract was that you would not accept any claims that did not contain within six hundred thousand? A. That I wasn't bound to do it. Q. It was optionary with you then? A. Yes, sir. Q. Did you ever accept any for less than six hundred thousand? A. I did. Q. And give him credit for it upon your books? A. I did." You may state as to whether or not you so testified and those are your answers to those questions.

Mr. WALSH.—Counsel, I understood you to say yesterday that you did not propose to start in at the beginning and go through that testimony?

Mr. MAYNARD.—I do not. I have got nearly through; I have not read one-tenth of it.

A. I presume that that was true as far as I know, that that was the evidence given there.

Q. Was that the only modification of the contract of May 22d? A. No, sir.

Q. What other modifications were there?

A. Well, there were two or three different things that were either left out from the original contract or talked of afterwards.

Q. If they were material, why did you not, when your

(Testimony of R. M. Cobban.)

attention was called to it by counsel, point it out at the time of the trial?

A. I was not asked about whether there were any other modifications in any other way; I was asked simply about that one modification.

Q. Well, if you can recall the other modifications that were left out in the hurry of drawing, as you testify, state what they were.

(Witness hesitates.)

Q. I beg your pardon, Mr. Cobban, but are you trying to think?

A. I was trying to think just what—I have a headache to-day and it is very hard for me—I am somewhat confused; I have this headache and was just simply trying to put the thing as clear as I could. Well, one of the modifications was as to showing lands to parties that I might send up there into that country. Wherever I sent parties up there and made a charge for locating those parties of one hundred dollars, he was to have a commission of five per cent on any such claims of parties that I sent in there. There were several modifications.

Q. Were any of them reduced to writing?

A. No, sir, they were not.

Q. If as a matter of fact, Mr. Cobban, this loan idea which you have surprised us with in your testimony did in fact exist, why wasn't that incorporated in the contract or in some of the modifications of it?

A. Because when that contract was originally drawn

(Testimony of R. M. Cobban.)

I did not expect to be able to acquire probably over twenty or thirty or forty thousand dollars worth of timber at the most, and that contract contemplated almost entirely the proposition of buying titled lands, or getting scrip lands on which I could place scrip, and it did not contemplate any time purchases. I did not know—I did not dream at that time that I would buy the large tracts of land that I afterwards did acquire..

Q. As a matter of fact it turned out that in the lands that were bought by you in which you received some assistance from Mr. Griswold, which you recognized by paying him for it, the greater part of it was bought under the Stone and Timber Act, was it not?

A. I should say that it was, but, putting it in that way, many claims that I paid Mr. Griswold for, Mr. Griswold had never seen, and I did not recognize by paying him that he was the instrument in securing those lands always. But he had been working in a certain locality, and I very often gave him credit for lands that I purchased in that district that he had nothing to do with whatever in any way.

Q. Why did you do that?

A. Well, because I felt that it was through him largely that I had become acquainted with the general character of the country up in there. I knew nothing about there being a large timber belt in about Ovando till Mr. Griswold had called my attention to the fact that there was large bodies of timber in there, and I gave him the benefit of everything that was taken in

(Testimony of R. M. Cobban.)

there unless in some instances where it was so absolutely clear that he had nothing to do with it and made a claim that he did, when I absolutely knew that it was entirely the reverse. For instance, in the scrip lands that I paid Mr. Dodd for and that he sued me for, it was so absolutely clear that he was trying to hold me up that I refused to pay him.

Q. Then, you paid him in many instances out of a sense of gratitude for opening up this timber land around Ovando, rather than for any actual services rendered?

A. Well, I can't say that. It was very hard to draw the line, to tell just where there might have been services rendered and where there was not.

Q. Now, is it not true, when you admit that the larger portion of the land was taken up under the Stone and Timber Act, of the lands that you purchased from the entrymen and entrywomen that were located in whole or in part by Mr. Griswold, that in each and every case it was done by reason of a specific agreement, carrying out this contract that he was to offer them—hire them for one hundred dollars in every instance?

Mr. BICKFORD.—We object, because it is not stated and has not been stated by the witness and is not in the testimony here that a larger portion of the lands entered were entered under the Stone and Timber Act, and because it has not been testified to by the witness or by anybody else that there was an agreemnt for the enter-

(Testimony of R. M. Cobban.)

ing of these claims at one hundred odllars apiece; it has been repeatedly denied by the witness.

A. Well, I don't know that the greater part of those were taken under the Timber and Stone Act, but quite a large percentage of the lands that I acquired were acquired under the Timber and Stone Act, but it certainly was not by reason of any such purported agreement with Mr. Griswold, and there certainly was no such agreement or instruction or arrangement, that he should purchase from these entrymen or entrywomen any of those claims, or that he should pay one hundred dollars or any other sum for them.

Q. Is it not true, Mr. Cobban, that the reason that no provision was made in the written contract or in the modifications of it which you testify about, about making provision for the lands that were located by these people and that they might retain after they after they had bought it as their own and you receiving your one hundred dollars commission—I say, is it not true that there was no provision made for paying Mr. Griswold in those cases because the fact did not exist at the time and was never thought of by you and never mentioned to Mr. Griswold?

A. It certainly was not the case—read that question. (Question read.) Well, I hardly understand the question; there is so much of it and it is so long that I hardly understand it.

Q. Very well, let me repeat it in another way—

(Testimony of R. M. Cobban.)

A. Make it as short as you can.

Q. Did you or did you not at the time that you say you made this contract, on the 22d of May, 1899, have in mind the locating of people on lands that could be entered under the Stone and Timber Act and charging them one hundred dollars? A. I did.

Q. At that time? A. I did, yes, sir.

Q. If you had that in mind at that time, why wasn't that incorporated in the agreement?

Mr. WALSH.—That is all provided for in that agreement that you have got in your record. You had better look over that agreement, Mr. Cobban, on page 27 of the record, before you answer that question. Now, before we go into this thing, I understand, your Honor, that the objection made goes to the examination of this witness at all at this time, upon the ground that there is no right to examine this witness on cross-examination, and that the testimony is not rebuttal.

The EXAMINER.—Yes, sir.

Mr. WALSH.—We object further to this particular question upon the ground that it is an evident attempt on the part of the Government to prove by secondary evidence the contents of the alleged written contract, and no proper foundation has been made for the introduction of secondary evidence as to that.

Q. What is your answer, Mr. Cobban?

Mr. BICKFORD.—We want to object further, that

(Testimony of R. M. Cobban.)

it is clearly an attempt on the part of counsel for the Government to prove something which was not in the contract, and is an attempt to show a modification of a written agreement by a subsequent parol agreement, which is not permissible.

A. Well, as I explained, on my direct testimony, that clause was inadvertently left out, although it does say here that where I sent parties to him, that I was to pay the commission within thirty days, as soon as an estimate was made on those claims, and that was in conformity with that understanding that I was to charge those people one hundred dollars for the locations, as stated; otherwise I could not make any payment to Mr. Griswold.

Q. Read the clause to which you refer.

Mr. WALSH.—One moment. You are reading now from what purports to be the copy of this contract?

The WITNESS.—Yes, sir.

Mr. MAYNARD.—Which was shown you by your counsel?

Mr. WALSH.—No, sir, I beg your pardon; it was not shown him by me. What are you reading from, Mr. Cobban?

The WITNESS.—It is the evidence submitted here in the case, Vol. 1, page 87, a purported copy of the contract.

(Testimony of R. M. Cobban.)

(By Mr. WALSH.)

Q. And you are telling counsel now, as I understand you, what appears in the paper that appears on that page of the testimony? A. Yes, sir.

(By Mr. MAYNARD.)

Q. Read it, please now, Mr. Cobban.

A. "But where the locations are accepted and filed on by parties furnished by the first party, then the commission to be paid as soon as an estimate can be reasonably made, not exceeding thirty days."

Q. And was that incorporated in the agreement for the purpose of carrying out this loan idea?

Mr. WALSH.—We object to that because it is an evident attempt on the part of the Government to prove the contents of the alleged agreement by secondary evidence, and no proper foundation has been laid for the introduction of secondary evidence of the alleged contract.

A. It certainly was.

Q. Why did you say a moment ago that the clause was inadvertently left out?

A. Because it did not go on and specify what was to be done in the matter; it was very incomplete. It did not state the facts in regard to the loans and the conditions under which they were to be made.

Q. Was that talked over between you and Mr. Griswold?

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—We object to that as purely hearsay and not proper cross-examination.

A. It certainly was.

Q. And that you were to get one hundred dollars for your services, and that he was to receive his commission on people that you sent up there, but it was by inadvertence on your part left out of the contract?

Mr. BICKFORD.—We object to that as not proper cross-examination, and also something which has already been gone into fully on the former cross-examination.

Q. Is that the way you wish to be understood?

A. Well, I don't know that we discussed the proposition that it had been left out of the contrat inadvertently, but we talked over the proposition that I might send some parties up there to be shown lands that were good timber and stone lands, and that he was to show them and do what he could in assisting those people, for which he was to receive a commission of five cents a thousand on the amount of timber on those claims within thirty days. With that understanding—he knew thoroughly how I was to get my pay, that I was to get one hundred dollars apiece from most of those people; not in all cases; sometimes there was a variation.

Q. Why was it, then, that you said that it was for the purpose of acquiring lands that you desired Mr. Griswold's service, if, as a matter of fact, you did not expect to acquire the lands at all?

(Testimony of R. M. Cobban.)

A. Because the main object in his working was the purchase of lands, but this was a side issue that at the same time would help; it would make a profit for me and help pay his expenses in looking up lands for me. As I explained a few moments ago, the expectation was, when this contract was entered into, that I would take those lands by scrip. The greater part of the lands were expected to be purchased by scrip or in the purchase of lands that had already been proven up and title acquired, and as I stated a moment ago, it was not dreamed of that we would go into the proposition to any extent.

Q. But this side issue, as you say, resulted in your securing more land under the Stone and Timber Act that you did under the main issue?

A. Well, I don't know whether there was any more land that we bought afterwards under the Timber and Stone Act than the other claims; I presume there was.

Q. Now, as a matter of fact, wasn't there about one hundred and thirty-eight million feet of land that was purchased by you, in which you recognized the assistance of Mr. Griswold?

A. There might have been one hundred and thirty-eight million feet that I paid him for; I don't know the amount.

Q. And of that amount wasn't there of patented land about six millions?

A. Well, I should have said that there was a good

(Testimony of R. M. Cobban.)

deal more than that of patented land, but I am not prepared at this time to say.

Q. And of scrip land about forty millions?

A. I haven't figured it up; I couldn't tell you.

Q. And the balance, seventy-eight or eighty millions as the case may be, the difference between those two and one hundred and thirty-eight millions, that being the amount obtained under the side issue, as you call it, of the Stone and Timber Act?

A. It might have been.

Q. And all of that for which you paid Mr. Griswold that was taken up under the Stone and Timber Act, was taken up under the proposition that you were not to buy it at all, but that you were to loan money on it and make one hundred dollars.

Mr. WALSH.—One moment. Don't answer that question at all. We object to it as not proper cross-examination.

Mr. MAYNARD.—We will see whether he will not answer it or not. You can make your bluff go just as long as you can, Mr. Walsh.

Mr. WALSH.—It will work this time.

Mr. MAYNARD.—You have made it for about nine months.

The EXAMINER.—There is no occasion for any remarks of that kind from counsel. Just make your objections.

(Testimony of R. M. Cobban.)

Q. What is your answer, Mr. Cobban?

Mr. WALSH.—The question does not call for any answer. The witness has told all the facts.

Mr. MAYNARD.—I insist upon it that the Examiner direct him to answer. Mr. Walsh has run up against almost all propositions, but he cannot run up against the Supreme Court of the United States.

The EXAMINER.—I suppose the real objection is that it is in the form of a statement and not in the form of a question.

Mr. MAYNARD.—We will let the Circuit Court of Appeals say whether it is a bad form or not.

A. Well the facts as stated there are not true or correct.

Q. In what respect are they not true?

Mr. WALSH.—Don't answer that. It is not proper cross-examination.

Q. Point out in that question that I last put to you the fact that you claim is not true.

Mr. WALSH.—You need not answer that. That is not the proper way to examine the witness.

The EXAMINER.—The question seems to involve several facts. I think it would be better for counsel to question the witness particularly, one at a time.

Mr. BICKFORD.—We want to submit at this time,

(Testimony of R. M. Cobban.)

your Honor, that this matter has all been gone into before on cross-examination.

Mr. WALSH.—It is asking the witness to draw some conclusions from the testimony that he has given; that is what it asks for, or rather, to approve the conclusions that the counsel draws.

Mr. MAYNARD.—I will withdraw the question to accommodate my friend.

Q. How do you account for the fact that what you call the side issue proved to be the largest portion of the purchase?

Mr. BICKFORD.—That is equally objectionable, upon the proposition that the witness is not called upon to account for a fact; it is not really a question, but simply a suggestion made by the counsel to the witness in the course of his cross-examination from deductions that counsel himself draws, and then asks the witness to account for the facts, or rather for the deductions that are drawn by the counsel himself in the nature of argument. We object to the entire examination.

Mr. MAYNARD.—I did not use the words "side issue"; those are the words of Mr. Cobban.

Mr. WALSH.—He don't have to answer.

The EXAMINER.—The real objection, if I had to pass on the question, would be that it is argumentative in form.

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—I hardly think that it is right to encumber the record to the extent of asking the witness to either assent to or dissent from propositions advanced by the counsel in the course of his examination.

A. I have already answered that, that the proposition, when we first talked of the timber deal—it was not contemplated that I would acquire or purchase probably more than a quarter of the amount of timber that I afterwards did purchase; that I did not know from time to time that I would be in the market to purchase timber.

Q. And you say that your construction of it is that when you sent people up to Mr. Griswold it was for the purpose of their taking the land and your not taking it? A. Yes, sir.

Q. Continuing in your examination, Mr. Cobban, you testified in answer to the question: "During the term of the employment of Griswold from the 22d day of May, 1899, did you not know that Griswold was employing men to assist him in the matter of finding locations of timber up there? A. At times, yes, sir. Q. Did you make objection to that? A. No, sir, not to a certain extent. Q. Mr. Cobban, is it not a fact that during the terms of the employment of Griswold under this contract, locating various claims, he had some three or four men employed, giving them orders upon you for their services rendered in and about the locations of the claims, and you would accept them and pay for them? A. Yes, sir, it is. Q. Is it not a fact that

(Testimony of R. M. Cobban.)

Mr. Jemison was in Mr. Griswold's employ? A. Part of the time, yes, sir." I will ask you as a matter of fact whether or not those questions were put to you, and whether those answers were given by you as reported?

A. I have no reason to doubt the correctness of the statements there.

Q. When you testified that Mr. Griswold was employing these men to assist him in the matter of finding locations of timber up there, were any of them under the Stone and Timber Act?

A. I presume some of them were purchased afterwards under the Stone and Timber Act, yes, sir.

Q. And the nature of their employment under Griswold was what, so far as it relates to the Stone and Timber Act, and that you paid them for on Griswold's order?

A. Well, I had no dealings with those people in regard to that at all; it was simply that if Griswold gave an order to some person to pay them, I did not question what it was for; I paid the order and charged it to Mr. Griswold's account. Those people were employed for various purposes; there were different ones employed in looking up scrip locations, locations of Government land that had timber sufficient to be of value, no matter for what purpose it was acquired, as I understood it. When he gave an order on me, if he had any

(Testimony of R. M. Cobban.)

credit those orders were honored and charged to his account.

Q. And you wished to be understood as saying that these men, in their employment under Griswold, so far as they were locating lands under the Stone and Timber Act, were not for the purpose of your buying them, but for the purpose of making loans upon them?

A. As a general thing, yes, sir.

Q. Well, what do you mean by as a general thing; were there some exceptions?

A. I think you have gone into that. Yes, there was a difference.

Q. And do you mean by the difference that in some cases they were not for the purposes of mortgage but for the purposes of your purchase?

A. No, sir, there was not any purchase—

Mr. BICKFORD.—The witness has already explained and we object to that. He has already explained that the people so employed were employed for different purposes, and many of them to make examination of the lands to see if it was suitable for entry under the scrip locations or Forest Reserve locations.

Mr. WALSH.—It is nothing more nor less than an argument between counsel and the witness as to deductions to be drawn from the evidence already given.

The EXAMINER.—I have the impression that Mr. Cobban half gave an answer.

(Testimony of R. M. Cobban.)

The WITNESS.—What I was going to say was this, that in talking about these various cases heretofore in my direct examination, I had stated that there were different circumstances connected with them, and stated the circumstances, and I did not think it was fair to put a question of that kind to me at the present time, after its having been gone into fully in detail.

Q. I simply asked you one question, and that was, if the men that you swore to on the civil trial that you paid on the order of Mr. Griswold and who were working for Mr. Griswold, if they were employed as far as the Stone and Timber Act locations were concerned to assist you in finding lands upon which you could locate parties on the mortgage proposition; that is what I asked you. A. And I answered it.

Q. And what is your answer now?

A. That there were different conditions.

Q. Then you wish to be understood, as I understand you, that there were other conditions than the fact that you were to use the lands for the purpose of making loans upon them?

A. As stated in my direct examination.

Q. And it is true, is it not, that whatever the conditions were, they all eventuated in your securing the land?

A. Well, I don't know; I bought a good deal of land there. I don't know that the efforts, and those orders that were paid for—the work that was done under

(Testimony of R. M. Cobban.)

those orders from Griswold all resulted in my purchasing all the land that those orders paid for or not.

Q. But not one of them resulted or eventuated in carrying out the purpose for which you say the employment was made, namely, the mortgage.

Mr. WALSH.—He has not yet said that he ever employed them for such purpose; not in a single instance has the witness ever testified that he employed these people to get lands upon which he could get mortgages. There is no such testimony in the record, and the question is manifestly unfair, and put simply for the purpose of entrapping the witness and getting him to make some admissions that counsel thinks may be dangerous.

Mr. MAYNARD.—I have no such purpose.

Mr. WALSH.—What is the use of putting the question, then, whether he located those lands for the purpose of acquiring them or for the purpose of putting mortgages on them? He never testified that he had parties locate lands for the purpose of putting mortgages on them.

Mr. MAYNARD.—I say that he has testified over and over again to that effect, as far as Mr. Griswold's locations are concerned. Now, what I am asking about is if the same thing holds good as to the men that Mr. Griswold employed.

(Testimony of R. M. Cobban.)

Q. (Last question read.) That is, the securing of the mortgage by you?

A. Well, I don't know anything about the agreement that Mr. Griswold had with these different men; I think I have answered the question.

Q. But you know what your instructions were to Mr. Griswold to give to these men that you paid, do you not?

A. I know what my talk was with the different men that came in contact with me, with Mr. Griswold, with Mr. Jemison and with Mr. Kilburn, and that was that there positively could not be any bargain made in any way, shape or manner for the purchase of any timber or stone claims, or anything said to the entrymen or entrywomen that would lead to the idea that we would buy those claims, or that I would.

Q. But as I say again, I ask you now the question, in each or any of those cases where the locations were made by Mr. Griswold or his men that you paid, did any one of them result in anything else than your securing the land?

Mr. WALSH.—He has answered that question.

Mr. MAYNARD.—He can say simply yes or no.

Mr. BICKFORD.—He has answered it probably twenty times in his cross-examination.

A. The same question was asked me three or four times on direct examination, too, and I answered no, I

(Testimony of R. M. Cobban.)

did not think that mortgages had been given in any of those cases.

Q. And that you acquired the title through deeds?

A. Well, I bought a good many claims; I don't know that I bought all of those claims.

Mr. WALSH.—You made the same answer here not five minutes ago.

Q. Continuing your testimony, Mr. Cobban, the question was put to you on page 32: "Mr. Cobban, you say Griswold went to Helena for you frequent'y? A. Sometimes he went for me and sometimes he went for other people. Q. I will ask you this question, if in the course of the employment of Griswold, if you would have occasion to send him to Helena frequently?" There was an objection which seems to have been made to that question and sustained. Now, I will ask you the question as to whether those same questions—

Mr. MAYNARD.—Just cut that whole thing out. I did not notice at the time that the questions had not been answered.

Mr. WALSH.—No, let it stand as it is.

Q. You know as a fact that Mr. Griswold was a witness for you, was he not, a great many times?

Mr. BICKFORD.—I object that the witness has not so testified.

A. He was not.

Q. Well, you know of the fact that it appears in

(Testimony of R. M. Cobban.)

this record that he was a witness a great many times in cases of entrymen and entrywomen that are named in the bill of complaint, do you not? A. I do.

Q. Do you know how he happened to be such a witness?

A. No, sir. I suppose he was named by the parties that took up claims.

Q. And that it was a matter between the entrymen and himself?

A. As a rule. It was certainly not between me and the entrymen.

Q. As a matter of fact, did he not charge for such services in his statement, and does it not appear in the statement which you have, and which is now in the hands of the Examiner?

Mr. WALSH.—We object to that because it is an evident effort on the part of the Government to prove by parol the contents of the written statement referred to, and no proper foundation for the introduction of parol evidence has been laid.

A. It is a fact that he presented a bill for some such services claimed to have been rendered to me, as also a great many other like bills that were rejected and withdrawn by the plaintiff in that case as not being legitimate.

Q. That is your answer?

A. That is my answer, yes, sir.

Q. Did you not pay him in some cases?

(Testimony of R. M. Cobban.)

A. I certainly did, for going to Helena as a witness.

Q. Why, if the relationship existed entirely between the entrymen and Mr. Griswold, did you pay him?

A. Because the amount of Mr. Griswold's services, his expenses as a witness, was included oftentimes in the loan to the parties, and it was at their request that I would pay those sums, and it was charged up to them in the amount of money that was loaned to them.

Q. The arrangement made was that Mr. Griswold should charge you, and you were to charge that amount to the entrymen?

Mr. WALSH.—You could not have understood him that way.

Q. Was that it, Mr. Cobban?

A. Mr. Griswold's agreement with me was that I was to pay him five cents a thousand on the timber, and that included any service that he could render the entrymen, and my charge of one hundred dollars included his time, but not his expenses whenever he went for anything of that kind, whenever he was named by an entryman, which might have been the case in some of those cases. The greater part of the cases I knew nothing about the naming of him as a witness in any way, and sometimes his time was even paid for, and in others just simply his expenses, and that was included in the one hundred dollars charged to the entrymen for the assistance that I could render.

Q. In each and every case it so happened that you

(Testimony of R. M. Cobban.)

never had occasion to charge that hundred dollars, because you received the land. That being the case, how did Mr. Griswold receive his pay?

A. It was charged up to these individuals every time; those expenses were charged every time when such was the condition, and Mr. Griswold received his pay. I think in some instances the people paid him direct, or paid his expenses; in others it was paid to him in the way of his commission, and his expenses were always allowed, always paid where there was such an arrangement.

Q. Is it not true, Mr. Cobban, that whenever Mr. Griswold appeared as a witness for these entrymen and entrywomen that are named in the bill of complaint, it was solely by reason of the contract and agreements which existed between you and himself, and that he looked to you solely for his pay, and that you knew it and that you did pay him?

A. It was certainly not the agreement. It was certainly not the case.

Q. And that it was a part of the agreements that had been made between you and Mr. Griswold that he was to be a witness and to furnish other witnesses?

Mr. WALSH.—Objected to because the agreement itself is the best evidence, and no proper foundation has been laid for the introduction of secondary evidence.

A. No, sir it is not the case.

Q. Do you wish to be understood as saying that you

(Testimony of R. M. Cobban.)

have any knowledge of these entrymen or entrywomen that are named in the bill of complaint selecting their own witnesses?

A. I have every reason to beleive that as a general thing they did.

Q. Don't you know that in a majority of cases they had nothing whatever to do with selecting their witnesses?

Mr. BICKFORD.—We object to this because it has all been gone over in cross-examination once; this is simply thrashing old straw over and over again.

A. Well, I have every reason to believe that they did select their own witnesses.

Q. Are you willing to swear?

Mr. BICKFORD.—He has already done so.

A. So far as I know—

Mr. BICKFORD.—Wait a minute. The witness has already sworn to the fact that counsel now asks, and now the question is asked him whether he is willing to swear to it. We object to that because it is not proper cross-examination.

Mr. MAYNARD.—The record shows how silly that objection is. The record shows that he said he has reason to believe, and I ask him if he will swear that they did.

A. So far as I know they certainly did name their own witnesses.

Q. Without simply naming them because they were

(Testimony of R. M. Cobban.)

told by Mr. Griswold or Mr. Jemison to name those witnesses?

Mr. BICKFORD.—Objected to as not proper cross-examination and immaterial and irrelevant. There is no question there.

Mr. MAYNARD.—There is a question.

A. If Mr. Griswold or Mr. Jemison named the witnesses for these people, I know nothing about it. It certainly was not under my direction that such should be. I supposed the people named their own witnesses, and it would be very natural—the law requires that they name witnesses who are familiar with the ground, and it would be one of the most natural things in the world that they should name Mr. Griswold and parties who were familiar with the lands as witnesses.

Q. Wasn't it a part of the arrangement that you made with Griswold that that was one of the things that he was to do?

Mr. WALSH.—Objected to because it is an evident effort on the part of counsel to prove the contents of a written instrument by parol. The written instrument is the best evidence, and no foundation has been laid for the introduction of parol evidence.

Mr. MAYNARD.—I will say in reply to the gentleman that I do not claim that Mr. Cobban was so obtuse and ignorant as to put that part of the arrangement—that illegal and criminal part of the arrangement in the written contract.

(Testimony of R. M. Cobban.)

Mr. WALSH.—We are glad to have the admission from counsel that the contract itself contains no criminal or illegal features in it.

Mr. BICKFORD.—We want to make the further objection at this time that this is not proper cross-examination, and a mere repetition of questions that have heretofore been propounded by counsel on cross-examination, and therefore that it is inadmissible at this time.

A. No, sir.

Q. Will you swear, Mr. Cobban, that you did not, with the assistance of Mr. Catlin, who was then and who is now in your employ, and Mr. Griswold and others, examine these lands and procure various persons of both sexes, for hire, to enter the lands under the Stone and Timber Act, and that you did not pay their expenses and those of their witnesses, and pay the price required to be paid at the proper land offices of the United States within the jurisdiction of which said parcels of land were respectively situated. Do you say that that is not true?

Mr. WALSH.—We object to that for the reason that the question embodies a number of separate and distinct propositions, which it is unfair to put in a bunch to the witness, and to require him to separate out those that can be answered affirmatively and those that must be answered negatively, but if the witness is to be interrogated at all concerning the allegations in the bill of complaint, they ought to be taken up separately so

(Testimony of R. M. Cobban.)

that he could make a separate answer. If counsel will take up separately the propositions in the bill of complaint, the witness will answer him categorically as to whether they are true or not.

Mr. MAYNARD.—Very well.

Q. I ask you if you are prepared to say that that is not true?

A. Well, I refuse to answer the question as it is put there.

Q. No, I accept the suggestion of my brother Walsh, Mr. Cobban.

A. Then, what is the question?

Q. I was going to put one to you. Is it not true that at some time subsequent to the first day of January, 1898, that you, acting for and in behalf of the defendant in this case, W. A. Clark, did set about the business of procuring titles to and possession of the lands named in the bill of complaint in this case?

A. That is positively false. I did not.

Q. Is it not true that, in pursuance of that purpose, you did enter into a contract in writing with Mr. Griswold of Clearwater—C. L. Griswold of Clearwater, in said State and District about the date of the 22d of May, 1899? A. It is not true.

Mr. WALSH.—There are two questions involved there; one is whether you did not enter into a contract with him, and the second is whether you entered into a contract for the purpose mentioned in the bill of complaint?

(Testimony of R. M. Cobban.)

The WITNESS.—The question, as I understood it, was didn't I enter into a contract for that purpose, and I answered it that way.

Q. Your answer then is that you did enter into a contract, but that it was not for that purpose?

A. I have already stated in my evidence here that there was a contract between Mr. Griswold and myself for doing work in the timber lands, but I answer now that that contract was not for the purpose of acquiring lands for the defendant in this case, W. A. Clark.

Q. Is it not true that you knew at the time that you entered into this contract with Mr. Griswold, that the purpose which you had in view and which you communicated to Mr. Griswold could only be carried out by false and fraudulent statements in writing, which should be under oath and which must be sworn to by the parties who should enter the lands in parcels not exceeding in the aggregate one hundred and sixty acres each?

A. There was no contract or talk or agreement or understanding with Mr. Griswold in any way that any act should be done or performed that would be in violation of any law of the United States.

Mr. WALSH.—Mr. Cobban, you had better answer the question as he asked it. The question is, didn't you know that the purpose you had could not be carried out except by these people committing perjury? The question is whether that is true or not.

The WITNESS.—It is not true.

Q. Is it not true, Mr. Cobban, that after you had

(Testimony of R. M. Cobban.)

made this agreement with Mr. Griswold, that you associated with yourself a man who was then in your employ, Mr. John B. Catlin—

Mr. WALSH.—Let him answer that. You are going to combine it with something else. You have asked him if, after he entered into this contract with Griswold, he associated himself with Catlin.

Q. Let me finish the question. And that you three parties, Cobban, Griswold and Catlin, by and through yourselves and others that were employed and paid by you under Mr. Griswold's control, did examine the lands that are named in the bill of complaint and which you afterwards purchased?

Mr. WALSH.—Now, you have got two or three propositions involved; one is whether he didn't employ Mr. Catlin, and another is whether he didn't examine these lands.

Mr. BICKFORD.—We ask now that the question be divided so that the witness may be enabled to answer it intelligently.

The EXAMINER.—It shall be so done if the witness requires it.

The WITNESS.—I refuse to answer the question when there are so many of them grouped together. I want them separated, and I will answer them.

Q. Well, is it not true that you, yourself, and that Mr. Catlin and Griswold did examine the lands that are named in the bill of complaint in this case, and did

(Testimony of R. M. Cobban.)

procure various persons of both sexes for hire, to enter such lands? A. No, sir.

Mr. WALSH.—Now, you have got two questions involved, whether they did not examine the lands in the first place, which is probably true, and another whether they did not get somebody for hire to enter them, which is probably false.

Mr. MAYNARD.—I will separate them.

Q. Didn't you yourself and through your agents, Catlin and Griswold, get persons to examine these lands?

A. I examined, or had parties examine a large amount, and probably all or very nearly all of the lands that are mentioned in the bill of complaint.

Q. Did you not send persons of both sexes, under an agreement with them, to enter these lands?

A. No, sir.

Q. Did you not pay their expenses and those of their witnesses, and pay the price required to be paid at the proper land offices of the United States?

A. In some instances I paid the expenses of the people at their request, as a portion of the loan that I had made to them, and the same thing may be said as to the purchase price of the lands, that I sometimes paid them at their request, or had it paid to the land office.

Q. And wasn't the money that you admit was paid for these various purposes, paid in pursuance of an agreement which you had made with them that they were to deed the land to you?

A. No, sir, it was not.

(Testimony of R. M. Cobban.)

Q. In no case? A. No, sir.

Q. And did you not, after the final proofs were made and after the money had been paid for the witnesses' expenses and the expenses of the entrymen and entrywomen and the payment for the land and the land office fees and the cost of advertising, receive the deeds from these entrymen and entrywomen?

A. I purchased those claims oftentimes after the people had proven up on their claims; I made them an offer for their land, which was accepted, as given in my direct testimony in relation to each one of the cases, but not in conformity with any prior agreement or arrangement of any kind that I would purchase their claims.

Q. And the first intimation between yourself and the entrymen or entrywomen that you were to buy the lands or wanted to buy them, was after the final proof had been made; was that so?

A. Unless the— Yes, sir.

Q. What have you to say as to whether or not the defendant in this case had any knowledge of the method by which you were securing title to these lands?

A. I don't know that Mr. Clark knew anything about how I was acquiring land, other than what was indicated by the abstracts of title that would be furnished him when I made a sale of lands to him.

Q. Are you willing to swear that you received no money from him for the purchase of them?

A. Why, I certainly received money from him for the purchase of them.

(Testimony of R. M. Cobban.)

Q. I mean to enable you to buy them in the first instance?

A. I did not receive any money from Mr. Clark.

Q. Or from anyone in his employ?

A. Or from anyone in his employ for the purpose of purchasing those lands.

Q. How was it that Mr. Wethey came to go with you to the bank to get the ten thousand dollars?

A. It was a loan that I was in need of. I had ample security; I had ample lands, and I wanted to get the money from the bank, and my recollection is now that at that time I had made a mortgage to Mr. Clark, or rather, had sold him lands with an agreement back that it was a mortgage, and they had ample security there, and I went to them. This was a transaction entirely with the bank, but Mr. Wethey went down and simply told them that he believed that the security would be all right, and the bank loaned me the money.

Q. What security would be all right?

A. That I would be all right, because the lands that I owned were sufficient to cover a loan of that amount.

Q. Didn't you state to Mr. Wethey the purpose for which you wished this money?

A. I presume that I stated to him that I wished to purchase timber lands, but I am not certain—

Q. Were not the timber lands that you so purchased with that money afterwards conveyed to the defendant?

(Testimony of R. M. Cobban.)

A. I am not certain that it was for that purpose at all. The money that I borrowed from the W. A. Clark bank may have been used for covering an overdraft that I had made some weeks before at other banks.

Q. You don't know what you wanted it for, then?

A. Well, I know the money was used either before that time or after that time in my general business, and largely for the purchase of timber lands.

Q. Mr. Wethey or Mr. Clark did not have any security for that loan?

A. They had no security whatever, and Mr. Wethey nor W. A. Clark personally were not responsible for the money; it was loaned me by the bank.

Mr. MAYNARD.—That is all.

R. M. COBBAN.

Subscribed and sworn to before me this 14th day of August, A. D. 1902.

HENRY N. BLAKE,

Examiner.

Whereupon a recess was taken until 2 P. M.

Wednesday, August 13th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

ROBERT W. KEMP, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Kemp, what official position do you hold, if any?

A. Clerk of the District Court of Missoula County.

Q. How long have you held that position?

A. Since the first Monday in January, 1901; I don't remember the date, about the 6th or 7th, I think; the 6th, I think it was.

Q. As such officer, is it part of your official duties to have the custody and control of the files of your office and the records? A. Yes, sir.

Q. In obedience to the subpoena have you now in court before the Examiner certain records and files?

A. Yes, sir.

Q. What are they?

A. The court journal and the papers that were filed in the case, the pleadings.

Q. In what case?

A. In the case of Chauncey L. Griswold versus Robert M. Cobban.

Q. Will you produce them for examination?

A. Yes, sir.

(Testimony of Robert W. Kemp.)

Q. Did you prepare a statement of the proceedings from beginning to end?

A. No, sir. I have a certified copy of the Register of Actions.

Q. Where is that? A. Here it is.

Q. You did not bring the register with you?

A. No, sir.

Q. For what reason?

A. It is in constant use there, every hour of the day nearly, and it would simply stop all business if I brought it out of the office.

Q. So in lieu thereof you prepared a certified copy of this? A. Yes, sir.

Mr. MAYNARD.—I ask that that be marked as an exhibit in the case, and offer the same in evidence.

The EXAMINER.—That will be marked Complainant's Exhibit No. 346.

Mr. WALSH.—We object to this as not being rebuttal, and as immaterial, irrelevant and incompetent; if material for any purpose, it constitutes a part of the Government's evidence in chief, and the time within which the Government can present its case in chief has long since expired.

Mr. MAYNARD.—I now offer, if your Honor please, the files of this case in evidence, and ask that there be printed in the record in the case the following portions of said files; The complaint, the answer, the amended

(Testimony of Robert W. Kemp.)

answer, the notice and motion made by the complainant for a corrected and specific itemized statement of accounts, and the additional bill of particulars.

Mr. WALSH.—I want to ask counsel to state what the purpose of this is?

Mr. MAYNARD.—The purpose is for the purpose of showing exactly what the truth is in regard to this case, and for the express purpose of rebutting the claim of the defense that these lands were located by Mr. Cobban, so much as were located under the Stone and Timber Act, in pursuance of a contract that he had made with these entrymen and entrywomen that he was to charge them one hundred dollars for his services in and about such location and paying for the land and paying for the necessary expenses, and to show the truth as claimed by the Government that at the time of this suit no such thought was entertained by him or claim made by him or by his counsel; that on the contrary it was upon portions of the Government land that were sought to be purchased by him, and that these people were located by him in accordance with an express agreement made with them that they were to locate these lands for him and deed to him immediately after the delivery to Mr. Cobban or his representative of the receiver's final receipt, and that they did it simply and solely for the purpose of securing one hundred dollars from him plus such expenses as they may have met.

(Testimony of Robert W. Kemp.)

Mr. BICKFORD.—We move to strike out the statement of counsel and the argument of counsel for the reason that the same is inopportune and not called for at this time, and we object to the introduction of the documents offered by him for the reason that the same are irrelevant, incompetent and immaterial, and because it is not proper rebuttal testimony, and if material at all, is testimony in chief, and because testimony in chief cannot be received at this time for the reason that the time has long since passed within which the Government might present testimony in chief.

Mr. MAYNARD.—I ask that those be marked for identification.

The EXAMINER.—I have no right to mark the original papers that belong to the office of the clerk of the District Court of Missoula.

Mr. MAYNARD.—I mean that you make a minute for yourself.

Mr. WALSH.—I don't see how the clerk of the court can permit these papers to remain here.

The EXAMINER.—If he does that, it is a matter of courtesy. I will give a receipt for them just the same as an attorney would, and they will be subject to his order at any time. They will not be marked in any way, and any time that he wants them he can just say so and I will return them. I will have them copied into the record.

(Testimony of Robert W. Kemp.)

And said papers, so introduced in evidence, being the files in the case of Griswold against Cobban, are as follows, to wit:

In the District Court of the Fourth Judicial District, in and for the County of Missoula, State of Montana.

CHAUNCEY L. GRISWOLD,
Plaintiff,
vs.
ROBERT M. COBBAN,
Defendant.

Complaint.

Now, comes the plaintiff and for his cause of action complains and alleges:

That on the 22d day of May, 1899, at the city of Missoula, in the State of Montana, plaintiff and defendant made and executed in duplicate, their certain contract in writing, whereby it was mutually agreed that the plaintiff should, on said 22d day of May, 1899, or as soon thereafter as practicable, undertake to locate to the best of his ability any and all timber lands that could be purchased at a reasonable figure lying and being within the counties of Deer Lodge and Missoula, both within the State of Montana, and to secure options upon the same; and that upon the location of said timber lands, and the purchase thereof by the defendant, or of securing options upon the same, said defendant was to pay to the plaintiff herein the sum of five

(Testimony of Robert W. Kemp.)

cents per thousand feet for all timber so located, or upon which options were secured as aforesaid.

Further, that the said plaintiff herein was to undertake and find within the said counties of Deer Lodge and Missoula, both within the State of Montana, so far as within his power so to do, and to the best of his ability, all timber locations lying and being within the surveyed lands belonging to the United States, and which were open for location under the Timber and Stone Act as defined by the Acts of Congress of the said United States, and that upon the location of said timber lands by the plaintiff as last aforesaid, defendant herein was to pay to the plaintiff herein the sum of five cents per thousand feet for all timber so located as aforesaid.

Further, that the said plaintiff herein was to undertake and find, as far as within his power so to do, and to the best of his ability, good locations of timber outside of the timber reserve of the United States lying and being situate within said counties of Deer Lodge and Missoula, both within the State of Montana, and in such a location of the territory therein situate as to justify the expenditure of eight hundred dollars for scrip, with which to purchase the same, and for the location of said timber lands at a suitable location within the territory last aforesaid mentioned, the defendant herein was to pay to the plaintiff herein the sum of five cents per thousand feet for all timber lands

(Testimony of Robert W. Kemp.)

so located; the defendant herein expressly agreeing to examine the various locations made by the plaintiff as aforesaid and as far as within defendant's power so to do, to purchase said timber lands, or to send parties to locate the said lands under the laws of the United States, if the amount and quality of the lands were satisfactory.

Further, that it was stipulated and agreed in said contract of writing that as a condition precedent to the payment of the said five cents per thousand feet for all timber lands located by the plaintiff herein as aforesaid and for which scrip was to be used to the amount of eight hundred dollars in the purchase of said lands, that the same should be actually purchased by the defendant herein in the manner aforesaid; but that for all locations of timber lands made by the plaintiff herein within the territory aforesaid and for which defendant herein was to send parties to file upon same, but failed, neglected or refused to do so, the plaintiff herein was to receive the said sum of five cents per thousand feet, notwithstanding the failure, neglect or refusal of said parties to file upon said lands so located by plaintiff as aforesaid.

Further, that the plaintiff herein should in all cases of locations of timber lands so made by him within the territory aforesaid, give to the parties so sent by defendant herein to file upon said lands, the boundary lines of said timber claims so located by plaintiff as aforesaid.

(Testimony of Robert W. Kemp.)

Further, that in the location of timber lands under the Timber and Stone Act by the plaintiff as aforesaid, the commission of five cents per thousand feet as aforesaid, should be paid to plaintiff herein upon the receipt of the receiver of land office, or upon the proper transfer of the land.

Further, that defendant herein was to furnish to the plaintiff herein a reasonable amount of money during the existence of said employment as in said contract of writing stated, as and for expenses to be used in and about the purchase of options on patented timber claims.

Plaintiff further complains and alleges; that on the 22d day of May, 1899, and for a long time thereafter, in accordance with the terms and stipulations in said contract of writing stated as aforesaid, plaintiff began the work of locating timber lands situate in the counties of Deer Lodge and Missoula, Montana, as aforesaid; and that in the location of said timber lands as aforesaid plaintiff used his best judgment in the selection of same as specified and contemplated that he should do in said contract of writing, and that plaintiff in all things has fulfilled and performed his part of said contract.

That in pursuance of the terms and stipulations of said contract of writing as aforesaid, plaintiff between the 22d day of May, 1899, and the 1st day of December of said year, located one hundred and thirty-eight mil-

(Testimony of Robert W. Kemp.)

lion six hundred and thirty-five thousand feet of timber lands within the said counties of Deer Lodge and Missoula, Montana, all of which he duly reported to the defendant herein, and by the said defendant accepted, and for which the defendant became and is indebted to plaintiff herein as and for commission upon same in the sum of six thousand nine hundred and thirty-one dollars and seventy-five cents ($6931.75.)

That under the terms and stipulations of said contract of writing as aforesaid, plaintiff herein at various times between the said 22d day of May, 1899, and the 1st day of December of said year, expended in labor and money for the defendant herein as and for expenses in and about the purchase of options upon patented timber claims, the sum of twelve hundred and seventy-one dollars and sixty-two cents, and for which amount defendant became and is indebted to plaintiff herein.

That the said sum of six thousand nine hundred and thirty-one dollars and seventy-five cents commission as aforesaid, and twelve hundred and seventy-one dollars and sixty-two cents amount of expenses incurred as aforesaid, aggregating the sum of eight thousand two hundred and three dollars and seven cents ($8,203.07) is due and owing to this plaintiff, from defendant, and although frequently demanded, still remains due and unpaid, except the sum of four thousand seven hundred and seventy-two dollars and fifty-three cents

(Testimony of Robert W. Kemp.)

($4,772.53), said amount having heretofore been paid by defendant to plaintiff herein, on account, leaving a balance of three thousand four hundred and thirty dollars $(3,430) still due, owing and unpaid.

Wherefore plaintiff demands judgment for the said sum of three thousand four hundred and thirty dollars ($3,430) and for his costs in this behalf laid out and expended.

DUNCAN & DRAFFEN,
Attorneys for Plaintiff.

State of Montana, }
County of Missoula. } ss.

Chauncey L. Griswold, being first duly sworn, deposes and says: I am the plaintiff in the foregoing entitled action; I have read and know the contents of the foregoing complaint and the contents thereof are true of my own knowledge, save such statements therein as are made upon information and belief and as to those such statements I do verily believe them to be true.

CHAUNCEY L. GRISWOLD.

Subscribed and sworn to before me this 21st day of January, 1901.

[Notarial Seal] A. L. DUNCAN,
Notary Public within and for the County of Missoula, Montana.

[Endorsed]: Filed Jan'y. 21st, 1901.

(Testimony of Robert W. Kemp.)

In the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Missoula.

CHAUNCEY L. GRISWOLD,
Plaintiff,

vs.

ROBERT M. COBBAN,
Defendant.

Answer.

Comes now the defendant above-named and for answer to the complaint of plaintiff admits, denies and avers as follows, to wit:

Admits that on or about the 22d day of May, 1899, at Missoula, Montana, plaintiff and defendant made and executed in duplicate their contract in writing whereby it was mutually agreed that the plaintiff should undertake to locate to the best of his ability any and all timber lands that could be purchased at a reasonable figure lying within the counties of Deer Lodge and Missoula, Montana, and to secure options on the same, but denies that upon securing options upon such timber lands defendant was to pay plaintiff the sum of five cents per thousand feet or any other sum for the timber upon the lands upon which such options were secured; denies that defendant was by said contract required to pay plaintiff

(Testimony of Robert W. Kemp.)

any sum whatever for securing such options, or any of them.

Defendant admits that upon the purchase by defendant of such tracts, thus taken under option, defendant was required by said contract to pay plaintiff for his services in securing such options the sum of five cents per thousand feet for the saw timber located upon such tracts, as such timber was estimated by the larger buyers of Western Montana.

Defendant admits that plaintiff by said contract undertook to find good locations of timber outside of the timber reserve of the United States, lying within said counties of Missoula and Deer Lodge and in such a location of territory as would justify the expenditure of eight hundred dollars for scrip with which to purchase the same, but denies that for the location of such timber lands at a suitable or any location within the territory last mentioned or any territory, defendant was to pay plaintiff the sum of five cents per thousand feet or any other sum for all timber lands so located or any of them, and denies that defendant expressly agreed to examine the various locations made by defendant, or expressly agreed to purchase said timber lands so far as it was within defendant's power to do so.

Defendant admits that said contract required that plaintiff should in all cases of location of timber lands made by him within said territory show the boundary lines

(Testimony of Robert W. Kemp.)

thereof to any and all persons sent by defendant for that purpose.

Defendant denies that said contract provided that plaintiff should make any locations whatever under said Timber and Stone Act, or that he should be paid for such locations the sum of five cents per thousand feet or any other amount upon the issuance of the receiver's receipt therefor or upon the transfer of the land or otherwise.

Defendant further answering avers that at the time of entering into said contract plaintiff represented to defendant that he could acquire good timber lands for defendant, and it was expressly understood and agreed between the parties to said contract that plaintiff should take options only on desirable lands and such as could be purchased at a reasonable figure, and defendant avers that he was under no obligation whatever to purchase tracts upon which plaintiff had secured options which were not good and desirable timber lands or which could not be obtained for a reasonable figure.

Defendant further avers with regard to selections of timber lands by plaintiff which would justify the expenditure by defendant of eight hundred dollars for scrip with which to purchase the same, said contract only authorized plaintiff to select good timber lands and such as contained good bodies of timber, and defendant avers that he was under no obligation whatever by the terms of said contract to purchase tracts selected by plaintiff which did not justify the expenditure of $800, or which did not

(Testimony of Robert W. Kemp.)

contain good bodies of timber, or which was not good timber land, or which for any reason he was unable to examine in person.

Defendant further avers that subsequent to the execution of said contract, as a basis for determining what should be deemed good timber land and such as would justify location and purchase as contemplated by said contract, it was verbally agreed between plaintiff and defendant that no quarter section tract selected by plaintiff containing less than 600 thousand feet of saw timber as usually estimated in Western Montana should be considered as complying with the requirements of said contract.

Defendant admits that he was to pay plaintiff at the rate of five cents per thousand for the estimated timber upon such tracts as were selected by plaintiff and approved or purchased by defendant, and defendant avers that he has fully performed the terms of said contract and fully paid the plaintiff for all services performed by him thereunder.

Defendant denies that he was to furnish to the plaintiff a reasonable or any amount of money during the existence of said employment or at any other time to be used in or about the purchase of options on patented timber claims or otherwise.

Defendant denies that he became or is indebted to plaintiff on account of such selection of lands in the sum of six thousand nine hundred thirty-one and 75/100 dollars or in any other greater sum than $5,127.75 which sum defendant has fully paid to plaintiff.

(Testimony of Robert W. Kemp.)

Defendant denies that under the terms or stipulations of said contract, or otherwise, at the times named in the complaint or at any other time or times, plaintiff expended in labor or money for the defendant as or for expenses in or about the purchase of options upon patented timber claims, or in or about any of the duties prescribed for plaintiff by said contract, the sum of twelve hundred and seventy-one and 62/100 dollars, or any other amount, or that defendant became or is indebted to plaintiff in said amount or in any amount for expenses incurred by defendant in performing the services required by said contract.

Defendant denies that said sum of $6,931.75, alleged commission, and $1,271.62, alleged expenses, aggregating the sum of $8207.07 is due or owing from defendant to plaintiff in whole or in part, and defendant avers that he has prior to the commencement of this action fully settled with plaintiff for all services and demands of every kind performed under or in pursuance of said contract and has fully paid the plaintiff therefor, and defendant denies that the balance of $3430, or any other sum is due, owing or unpaid from defenadnt to plaintiff.

Defendant denies generally each and every allegation of said complaint not hereinbefore specifically admitted or denied.

(Testimony of Robert W. Kemp.)

Whereupon defendant having fully answered prays that he may have judgment against the plaintiff for his costs herein expended.

E. E. HERSHEY,
E. B. HOWELL,
Attorneys for Defendant.

State of Montana,
County of Missoula. } ss.

E. B. Howell, being duly sworn on oath says that he is one of the attorneys for the defendant named in the foregoing answer; that said defendant is absent from the County of Missoula and State of Montana, where affiant resides and for that reason the foregoing answer is verified by affiant; that affiant has read the said answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

E. B. HOWELL.

Subscribed and sworn to before me this 26th day of February, 1901.

[Notarial Seal] R. R. JONES,
Notary Public in and for Missoula County, Montana.

(Testimony of Robert W. Kemp.)

Service of the foregoing answer and the receipt of a copy of the same are hereby acknowledged this 28th day of February, 1901.

DUNCAN & DRAFFEN,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 28, 1901.

In the Fourth Judicial District Court.

State of Montana,
County of Missoula.

CHAUNCEY L. GRISWOLD,
Plaintiff,

vs.

ROBERT M. COBBAN,
Defendant.

Amended Answer.

Now comes the defendant, by his counsel, and leave of court having been first had and obtained, files his amended answer herein as follows, to wit:

Denies each and every allegation contained in plaintiff's complaint and not hereinafter specifically admitted, qualified or denied.

Admits that on the 23d day of May, 1899, he made and entered into a contract in writing with the said defendant wherein itwas stipulated and agreed that the said defendant should look up, discover and ascertain boun-

(Testimony of Robert W. Kemp.)

daries of timber lands in the counties of Missoula and Deer Lodge, both in the State of Montana.

That the said plaintiff was to take options on timber lands in said counties and State and was to sell, assign, transfer and turn over to this defendant all such options for the purcahse of said timber lands as were taken by the said plaintiff, and such as contained on the lands a sufficient amount or quantity of timber to justify the purchase of the same at the option price and for all such options so taken by the plaintiff containing sufficient quantity of timber as above, the defendant was to pay the plaintiff the sum of five cents per thousand feet for every thousand feet of timber contained on the land, the option to which so procured by the plaintiff was assigned to the defendant.

Admits that by the terms of said contract the said plaintiff was further to find surveyed lands subject to the timber and stone entry under the land laws of the United States.

Defendant further admits that by the terms of said contract the said plaintiff was to find timber lands of the United States, subject to be selected in lieu of Forest Reservation lands, and agreed that when said lands were so discovered by the said plaintiff and the said defendant notified thereof, that if he could examine the said lands in person and they were found to be satisfactory, that he would select said lands in lieu of Forest Reserve lands and would pay for the right to make said selection the sum of $800.00; in other words, would purchase so-called

(Testimony of Robert W. Kemp.)

forest scrip and locate on said lands to the extent of $800.00, and would pay to the said plaintiff for the discovery and pointing out of said lands to the defendant the sum of five cents per thousand feet for all timber estimated on lands located and selected in lieu of Forest Reserve lands, provided the said defendant was able to make personal inspection and estimation of the quantity of timber on said lands, and not otherwise.

Defendant denies that he was to pay the said plaintiff five cents per thousand feet, or any other sum per thousand, on timber lands discovered or selected by the plaintiff subject to selection in lieu of Forest Reserve lands.

Defendant further alleges that subsequent to the execution of said contract in writing that it was mutually agreed by and between plaintiff and defendant that quarter sections containing by estimation less than six hundred thousand feet should not be considered under any circumstances.

Defendant admits that the said plaintiff went to work under said contract, but denies that the said plaintiff under said contract, or otherwise or at all, ever found or discovered for the said defendant, within the meaning of said contract, or otherwise or at all, lands on which were situated timber amounting to 138,635,000 feet or any other amount greater than 105,480,000 feet, or that the defendant ever became or was indebted under the said contract, or otherwise or at all, to the said plaintiff in the sum of $8,203.07 or any greater sum or amount than $5,274.00, all of which said defendant, before the institution of this

(Testimony of Robert W. Kemp.)

suit, fully paid off and discharged to the said plaintiff, and denies that he is indebted to the said plaintiff now, or was at the institution of said suit, in the sum of $3430.00, or any other sum or amount.

Defendant for a further defense to plaintiff's action alleges:

That before the institution of said suit by said plaintiff, this defendant and plaintiff made a full, fair and complete settlement and adjustment of all their accounts and matters of differences and at said time defendant fully paid off and discharged to plaintiff the full amount so found to be due plaintiff on said settlement, and that the same was accepted by the said plaintiff in full settlement of all accounts, claims and demands of every nature and kind against said defendant.

And now having fully answered to plaintiff's complaint, defendant prays to be dismissed with his costs.

E. B. HOWELL,
E. E. HERSHEY,
MARSHALL & STIFF,
Attorneys for Defendant.

State of Montana, }
County of Missoula. } ss.

E. B. Howell, being first duly sworn, on his oath deposes and says that he is one of the attorneys for the defendant in the above entitled action. That the said defendant is now absent from the county of Missoula and State of Montana, the county in which affiant resides

(Testimony of Robert W. Kemp.)

and for that reason affiant makes this affidavit; that he has read the foregoing amended answer and knows the contents thereof and that the same is true of his best knowledge, information and belief.

E. B. HOWELL.

Subscribed and sworn to before me this the 9th day of March, 1901.

[Notarial Seal] HENRY C. STIFF,

Notary Public in and for Missoula County, State of Missoula.

Services of the foregoing amended answer, by copy, is accepted this 9th day of March, 1901.

DUNCAN & DRAFFEN,
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 8. 1901.

In the District Court of the Fourth Judicial District, in and for the County of Missoula, State of Montana.

CHAUNCEY L. GRISWOLD,
Plaintiff,

vs.

ROBERT M. COBBAN,
Defendant.

Notice of Motion.

To the Above-named Plaintiff and Duncan and Draffen, Attorneys:

You will please take notice that on Saturday, March 2d, at ten o'clock A. M., or as soon thereafter as counsel

(Testimony of Robert W. Kemp.)

can be heard defendant will move the Court for an order requiring a more specific and corrected itemized statement of account upon which this action is founded. Said motion will be based upon the reasons set forth in the written motion, a copy of which is hereto attached and filed herewith.

E. E. HERSHEY and
E. B. HOWELL,
Attorneys for Defendant.

We hereby accept service of the foregoing notice and motion attached thereto and acknowledge receipt of a copy thereof this 28th day of February, 1901.

DUNCAN & DRAFFEN,
Attorneys for Plaintiff.

In the District Court of the Fourth Judicial District, in and for the County of Missoula, State of Montana.

CHAUNCEY L. GRISWOLD, Plaintiff,
vs.
ROBERT M. COBBAN, Defendant.

Motion.

Now comes the above-named defendant and moves the Court for an order requiring the above-named plaintiff to furnish said named defendant a corrected, itemized statement of account, and as grounds therefor alleges, that on the —— day of February, 1901, an itemized

(Testimony of Robert W. Kemp.)

statement of account was served upon this defendant, the original paper is attached hereto marked exhibit "A" and made a part of this motion. Defendant immediately excepted to the first item in said account on the ground that it is too general, it giving the location of 138,635,000 feet of timber. On February 26th, statements "A," "B" and "C" and exhibit "A" were served upon this defendant as a further itemized statement of this item complained of, the original paper is attached hereto marked exhibit "B" and made a part of this motion. These several statements contained in exhibit "B" foot up 132,525,000 feet, and therefore do not agree with the number of feet alleged in the complaint and is incorrect in some particulars.

Also, in exhibit "A" an item is given: "November 10 to 60 days' expenses on Blackfoot and Missoula, $150.00." Defendant alleges that this is too general. Also, same date: "To 60 days' witness fees from Helena and Missoula at $5 per day, from June 22d to November 25th, 1899, $300" is also too general. Plaintiff should be required to furnish a more specific account as to these two items.

E. E. HERSHEY and
E. B. HOWELL,
Attorneys for Defendant.

(Testimony of Robert W. Kemp.)

Exhibit "A."

In the District Court of the Fourth Judicial District, in and for the County of Missoula, State of Montana.

CHAUNCEY L. GRISWOLD, Plaintiff,

vs.

ROBERT M. COBBAN, Defendant.

Now, at this day comes the plaintiff, by his attorneys, and for a compliance to the written demand of defendant heretofore filed, for an itemized account upon which this action is founded, submits the following as said account:

1899.

To location as per contract of 138,635,000 feet of timber in Deer Lodge and Missoula counties, 5 cts. per thousand..... 6,931.75

1900.

Aug. 24.	To 8 days' labor on Blackfoot.....	40.00
Aug. 24.	To 2 days' labor on Bitterroot.....	10.00
Aug. 24.	To expenses on Blackfoot.....	23.50
Oct. 2.	To refund amount on Orchard Homes.....	250.00
Oct. 16.	To 9 days' labor Blackfoot expense.	70.30
Oct. 16.	To balance due Combie & Seeley claim.....	44.12

(Testimony of Robert W. Kemp.)

1899.

July 31.	To Gillie & Cloutier expense in filing	51.50
Aug. 1.	To Gillie & Cloutier final proof.....	37.85
Aug. 16.	To amount paid Watson for Catlin..	5.00
Aug. 16.	To amount paid Burgoin atty's fees	20.00
Sept. 27.	To draft paid "Garnet News".....	75.00
Sept. 27.	To draft paid "Garnet News".....	82.50
Aug. 1.	To amount paid Jakways & Faust without order.....	20.00
Nov. 10.	To 60 days' expense on Blackfoot and Missoula.....	150.00
Nov. 10.	To 60 days' witness fees Helena and and Missoula at $5 per day, from June 22 to Nov. 25, 1899.....	300.00
Aug. 1.	To expense Osberg, Oregon and return.....	91.75
		$8,203.37

Cr.

Aug. 16.	By Check..... ....34.50		
Aug. 16.	Excess charge Gillis..... ...	32.65	(33.65)
Aug. 19.	Cash Jakways & Faust.....	100.00	
Aug. 19.	By check.....	50.00	
Sept. 10.	By cash.....	25.00	
Sept. 10.	To Kilburn....	50.00	
Sept. 12.	By cash.....	40.00	
Sept. 13.	By cash.....	25.00	
Sept. 13.	By cash.....	20.00	
Sept. 13.	By cash.....	150.00	

(Testimony of Robert W. Kemp.)

Sept.	23.	By cash	125.00
Sept.	23.	By cash	20.00
Sept.	23.	By cash	20.00
Sept.	23.	By cash	20.00
Oct.	1.	By cash	25.00
Oct.	1.	To Jamison	35.00
Oct.	11.	By cash	100.00
Oct.	11.	Cash	175.00
Oct.	11.	By cash Johnson	33.00
Oct.	11.	Cash Jamison	75.00
Oct.	11.	Cash	50.00
Nov.	20.	Cash	250.00
Nov.	27.	Cash	150.00
Nov.	28.	Cash	100.00
Nov.	29.	Cash	100.00
Dec.	1.	Cash	50.00
Dec.	7.	Cash Kilborn	310.00
Dec.	4.	Cash Dinsmore	50.00
Dec.	9.	Cash Dinsmore	30.00
Dec.	9.	Cash	25.00
Dec.	9.	Recording deeds	3.65
Dec.	9.	Revenue stamps	.95
Dec.	9.	Cash	25.00
Dec.	15.	Cash Jamison	103.00
Dec.	15.	Cash Frizzell	20.00
Dec.	15.	Cash insurance	25.00
Dec.	15.	Cash	350.00
Dec.	15.	Cash	100.00
Dec.	15.	Blacksmith	4.00

(Testimony of Robert W. Kemp.)

Dec. 15.	Cash Orchard Homes	100.00
Feb. 5.	Cash	25.00
Feb. 17.	Cash for wife	60.00
Mar. 20.	Cash	50.00
April 14.	Cash	25.00
May 17.	Cash Orchard Homes	100.00
May 14.	By cash	20.00
May 28.	Cash	901.00
May 31.	Cash Missoula nursery	2.85
May 31.	Cash Orchard Homes	50.00
Aug. 8.	Cash	40.00
Aug. 25.	Cash	33.50
Sept. 21.	Cash Gorrie	50.00
Sept. 24.	Cash	20.00
Oct. 9.	Cash	25.00
Oct. 25.	Cash	100.00
Nov. 28.	Cash	45.00
Dec. 3.	Cash	25.00
Dec. 17.	Cash	186.80
Dec. 17.	Cash interest Nat'l Bk	11.63
	Total	$4,772.53 $8303.37

Balance due $3,430.84.

DUNCAN & DRAFFEN,

Service of this itemized account is hereby acknowledged, by copy, this 7th day of February, 1900.

_____,

Attorneys for Defendant.

[Endorsed]: Bill of Particulars. (Copy.)

(Testimony of Robert W. Kemp.)

Exhibit "B."

STATEMENT "A."

TIMBER LOCATED BY C. L. GRISWOLD.

	M
Oscar Muckenhiren	600
O. Muchmore	800
E. D. Doney	1,025
Martha Doney	400
E. W. Hoyt	2,690
L. D. Jakways	1,975
E. Z. Faust	1,660
G. W. Muchmore	885
C. E. Johnson	1,300
W. M. Zander	700
Elis Muchmore	415
Albert Muchmore	600
F. B. Chattin	900
Thos. Pelkey	525
John Gilles	875
C. Cloutier	825
John White	750
H. C. Chattin	625
Harriet Bryan	700
S. Tepper	700
Nelson Opsata	565
Stewart	675
Dunnigan	1,100
E. D. Doney	935

(Testimony of Robert W. Kemp.)

J. B. Catlin	1,050
L. Barrett	1,100
Belle Bryan	650
E. Lehman	500
L. T. Bryan	625
	26,150
At 5 c. pr. M feet	$1,307.50

STATEMENT "B."

TIMBER LOCATED BY GRISWOLD.

	M
Hiram Dodd	760
Matilda Dodd	745
Harrison Dodd	825
Lizzie Dodd	610
Edward Dodd	965
Cora Dodd	1,200
K. Watson	620
T. H. McConnell	960
C. B. Sperry	1,233
Harriet Watson	590
D. E. Watson	885
G. P. Jamison	840
A. L. B. Jameson	700
J. C. Gillman	965
Emma Dildine	1,235
George Dildine	1,020
J. F. Jameson	900

(Testimony of Robert W. Kemp.)

Matilda Eddy	820
Sarah Yarger	815
Thos. Roll	720
A. J. Jameson	750
Jas. Wheaton	775
Mary Eddy	825
Herbert Eddy	1,060
M. B. Watson	830
R. Pelkey	445
Eve. Jameson	1,220
Jas. Mize	870
Laura Roll	860
C. H. Jameson	900
Calvin Yarger	820
Carried Ford.	26,763

STATEMENT "B" (continued).

	M.
Brought ford.	26,763
Zora Jameson	690
Jennie Mize	645
L. A. Wells	1,275
Lizzie Wells	1,115
J. G. Hendrix	850
M. E. Wright	1,025
L. T. Catlin	950
May Hawthorne	1,300
H. C. Dorman	625
	35,238

(Testimony of Robert W. Kemp.)

STATEMENT "C."

TIMBER LOCATED BY GRISWOLD. DEED CLAIMS.

Robt. Starkey	685	
M. R. Stairs	1,210	
Irene Hendrix	635	
Mary Starkey	835	
Alb. Ahle	680	
J. B. Reeve	795	
E. A. Reeve	845	
Jno. Murtaugh	695	
Vital Cyr	1,070	
Levi B. Cyr	400	
Ambrose Martin	885	
Joe Frizzell	840	
J. B. Seely	560	
Herman Spieker	1,225	11,360

SCRIP LANDS.

	Sec.	Tp.	Range.	M.
E2 NE4	10	16	16	800
	12			
N2 NW4 W2 NE4	4	16	16	920
NE4	22	16	15	1,360
NW4	22	16	15	1,490
SE4	22	16	15	1,925

(Testimony of Robert W. Kemp.)

NE4	34	16	15	942	
S2 S2	20	16	13	1,165	
6-40s	26	16	13	1,665	(1,665)
7-40s	28	16	13	1,700	
4-40s	30	16	13	1,010	
3-40s	32	16	13	1,180	
7-40s	34	16	13	2,130	
3-40s	32	16	12	700	
6-40s	34	16	12	1,700	
				18,687	

Carried ford.

STATEMENT "C" (Continued).

				M.	
	Brought ford.,			18,687	
N2 S2	18	15	13	1,300	
NW4 NW4	30	15	13	200	
S2	20	15	11	2,615	
S2	30	15	11	2,675	
6-40s	2	14	17	1,350	
2-40s	10	14	17	410	
7-40s	14	14	17	1,370	
5-40s	24	14	17	950	
NW4 SE4	4	14	13	250	
				29,807	

CONDITIONAL.

NW4	2	14	11	1,160	

(Testimony of Robert W. Kemp.)

Exhibit "A."

ADDITIONAL TIMBER LOCATED, NOT IN STATEMENT SUBMITTED BY R. M. COBBAN.

	Feet.
G. Brunner, Sec. 17, Tp. 15, R. 12	1,000
C. Moss, W2 NE4 and Lots 2 & 3, Sec. 8-15-14	570
D. L. Chattin, SE4, Sec. 10-15-15	925
J. Saleen, W2 NW4 NE4 NW4, 10-15-15	545
J. E. L. Deering, SW4, 10-15-15	695
C. C. Snyder, Lots 1-2 & 3, 2-15-15	470
M. P. Dunham, Lots 1-2 & 3, 4-15-15	585
F. B. Arey, Lot 4 and N2 SW4, 4-15-15	630
D. McGillis, Lots 2 & 3 and E2 SW4, 6-15-15	580
E. M. Hardy, Lots 1-2-7-8, 32-15-15	1,200
J. H. Hardy, Lots 3-4-5-6, 32-15-15	755
E. M. Kilburn, SW4, 2-13-15	685
Combie, N2 NW4, SW4 NW4, NW4 SW4 of Sec. 6-14-16 (Paid 25.00)	855
E2 NE4, NE4 SE4, 34-14-14	395
M. McDonald, SW4, 34-14-15	540
A. Mickels, S2 NW4, 8-14-16	400
C. B. Mickels, W2 SE4, 32-14-16	500
J. M. Peers, Homestead	255
J. B. Seeley, T. & S. claim, 1/2 paid or 2-1-2c. Pr. M.	1,055
W. J. Eddy, S2 NE4, S2 SW4, 8-14-15	575
J. L. Gillman, E2 NE4, SW4 NE4, NW4 SE4, 8-14-15	530

(Testimony of Robert W. Kemp.)

R. M. Jameson, S2 SW4, S2 SE4, 6-14-15.....	535
Jas. Connors, 80 acres in Tp. 16 N., Range 16 W...	500
Geo. Milan, 160 acres in Tp. 16 N., Range 16 W...	800
SW4, 30-15-13.....	400
Norman Newell, N2 NW4, SE4 NW4, NW4 NE4, Sec. 22-15-16.....	750
W. Miller, E2 NE4, SW4 NE4, NE4 SE4, 22-15-16	800
S. C. F. Cobban, 3-40s in 20-14-15.....	550
O. C. Clark, S2 NE4, & Lot 2, 14-14-15.....	600
	18,680

Continued over.

Unsurveyed lands.

66.

2-40s in Sec. 24-16-16.....	350
4-40s in Sec. 22-13-17.....	715
15-40s in Sec. 14-13-17.....	3,305
6-40s in Sec. 12-13-17.....	1,450
9-40s in Sec. 32-14-17.....	1,745
4-40s in Sec. 34-14-17.....	620
8-40s in Sec. 22-14-17.....	1,945
Brought over from Exhibit "A"	18,680
	28,810

[Endorsed]: Filed Feb. 28, 1901.

(Testimony of Robert W. Kemp.)

In the District Court of the Fourth Judicial District, in and for the County of Missoula.

CHAUNCEY L. GRISWOLD,
Plaintiff,
vs.
ROBERT M. COBBAN,
Defendant.

Now comes the above-named plaintiff and complying with the order of the Court made on the 2d day of March, 1901, in said cause, for a more specific and general statement of the various items, referred to in the motion of the defendant filed in said cause asking for same, and hereby states the following:

Replying to all that part of said motion beginning on line eight and ending on line sixteen, plaintiff says that there was an error in the statement heretofore presented to defendant's counsel, in that, 6,110,000 feet were omitted, which is made up of the following claims:

Nellie Ahle claim 710,000

James Osborne claim, Laberty claim, Cornish claim, and Wornar claim, aggregating..5,400,000

And for more explicit statement of the following item referred to in said motion, to wit: "November 10th. To sixty days' expenses on Blackfoot and in Missoula, $150.00," plaintiff says:

(Testimony of Robert W. Kemp.)

JUNE EXPENSE IN TEPPER PROOF.

Team Clearwater to Bonner	$10.00
Team Bonner to Missoula	5.00
Expense hotel in Missoula	6.00
Team from Missoula to Clearwater, and expense and driver	15.00
In July and August, expense in Gillis and Cloutier proof, Ovando to Missoula self and team	2.75
Expense for team in Missoula, while in Helena in proof of Gillis, Cloutier, Johnson, Pelkey and Chattin, 16 days	16.00
One night going and one night returning, in above cases in Missoula, self	3.00
Expense wherein plaintiff was witness in various cases as to the claims, hotel bills, self and team at Clearwater, Potomac, McNamars, Stars, and in Missoula, where cash was paid by plaintiff, from time to time as bills were contracted for the use and benefit of defendant and at his special instance and request, of which said itemized account is either lost or destroyed, and for this reason, plaintiff cannot submit a more explicit statement of said items, only the total aggregate of same now being in possession of plaintiff	92.25
	$150.00

And for a more explicit statement in explanation of the item "to sixty days witness fees, Helena, and Mis-

(Testimony of Robert W. Kemp.)

soula at $5.00 per day, from June 22d to November 25th, 1899, $300.00" Plaintiff says, as follows:

Name.	Date.	Land Office.	Days.
Stephen Tepper,	June 23, 1899,	Missoula,	4
Thos. Pelkey and			
B. F. Chattin,	Aug. 15, 1899,	Helena,	5
Harriett Bryan,	Sept. 4, 1899,	Missoula,	3
Lelia T. Bryan,			
Belle Bryan and			
Edgar Lehman,	Sept. 14, 1899,	Helena,	5
O. Muckenhirn,	Sept. 12, 1899,	Missoula,	3
T. H. McConnell and			
C. B. Sperry,		Helena,	5
J. B. Catlin and			
L. Barrett,		Helena,	5
D. E. Watson,			
Cora Dodd and			
Edw. Dodd,		Helena,	5
Harry Dorman and			
Charles Moss,		Helena,	5
E. M. Kilburn,		Missoula,	1
Lizzie Wells,		Helena,	5
M. B. Watson,			
Harriett Watson, and			
Katie Watson,		Helena,	5
For Lelia Bryan to sign deed from Potomac			1
For E. Lehman to sign deed from Bonner—two trips			2
To tender Wells payment for claims at Woodworth			3

(Testimony of Robert W. Kemp.)

To pay for and receive deeds from Rogers Brothers at Ovando 3

Total days, 60

DUNCAN & DRAFFEN,
Attorneys for Plaintiff.

Service by copy of above bill of particulars or items acknowledged this March 2d, 1901.

MARSHALL & STIFF,
Of Attorneys for Defendant.

[Endorsed]: Filed at 2:30 o'clock P. M., Mar. 2, 1901.

I hereby certify that I have examined and compared the copy contained in the record of the complaint, answer, amended answer, notice and motion for corrected and specific itemized statement of account and additional bill of particulars, being files in cause numbered 1886, Chauncey L. Griswold vs. Robert M. Cobban, in the District Court for the Fourth Judicial District of the State of Montana, in and for the County of Missoula, and that the copies of said papers so inserted in the record in this case are correct.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Q. What is there in that book, Mr. Kemp?

A. There are one or two agreements here and the usual notes of the proceedings in the courtroom.

Q. Just let me see that, please; what page is that?

(Testimony of Robert W. Kemp.)

A. It begins at page 186; here is the first entry.

(Witness then showed counsel the various successive entries in court journal.)

(By Mr. WALSH.)

Q. Those are entered in the Register of Actions, are they not, Mr. Kemp?

A. There is a note of them made in the Register of Actions, yes, sir.

Mr. MAYNARD.—I now offer in evidence this entry that appears on page 292 of the journal, as follows.

Mr. BICKFORD.—We object to the reading of any record, because it is irrelevant and immaterial and is not proper rebuttal testimony and is incompetent for any purpose.

The EXAMINER.—Let the witness read the entry.

The WITNESS.—(Reading:) "District Court Journal, fourteenth day, May Term, 1901. June 12th, 1901. Chauncey L. Griswold vs. Robert M. Cobban. This cause having been brought on for hearing, this day it is by agreement of counsel for both sides ordered that the order of reference heretofore made be vacated and set aside, and on motion of Duncan & Draffen, attorneys for plaintiff, it is ordered that this case be dismissed, and by consent of both parties, leave is granted them to withdraw all papers and letters filed as exhibits in this cause."

Cross-examination waived.

(Testimony of Chauncey L. Griswold.)

It is stipulated between the parties that the Examiner may read and correct the testimony of the witness, Kemp, and certify the same with like effect as if it had been read and signed by the witness himself.

I hereby certify that I have read the foregoing transcript of the testimony of the witness, Kemp, and that said transcript is a substantially correct statement of the testimony given by said witness.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

August 13th, 1902, two o'clock, P. M.

The hearing was resumed pursuant to adjournment.

CHAUNCEY L. GRISWOLD was thereupon called to the stand in rebuttal, and testified further as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Griswold, I will ask you if you have been in attendance before the Examiner, and have heard the testimony of Mr. Cobban, that he has given on this examination, and had access to the record, and have used the same?

A. I have heard the greater portion of the testimony of Mr. Cobban, and I have had access to the record whenever I chose to consult it, and have read over a great deal of it.

Q. Were you here in the courtroom this morning?

A. I was, yes, sir.

(Testimony of Chauncey L. Griswold.)

Q. You heard Mr. Cobban's testimony that was given this morning, did you? A. Yes, sir.

Q. I will ask you if you heard the testimony that he gave relative to the language contained in the contract which you made with him, and which appears of record on pages 86 and 87 and 88?

A. I heard it, yes, sir.

Q. Do you remember the facts of his referring to a certain paragraph which he claims bore upon the question of locating lands upon which he was to take mortgages? A. I do.

Q. What have you to say with reference to that matter? Was such an arrangement as he there testified to, made between you?

By Mr. WALSH.—We object to that question on the ground that it is leading, and not proper rebuttal testimony.

A. There was never anything of the kind said about a mortgage between Mr. Cobban and myself until some time about the latter part of August, or the first of September of that year, 1899, and I—

By Mr. WALSH.—This sounds sort of familiar, it has a familiar sound. It seems to me that we have heard something of that kind before.

(Witness continuing).—I don't call to mind now that Mr. Cobban mentioned a mortgage to me, but he did say to me that the money from that time on advanced to these different entrymen and entrywomen was to be considered as a loan.,

(Testimony of Chauncey L. Griswold.)

Q. Previous to that conversation that you have now referred to, state when, if at any time, you ever heard the subject mentioned before by him?

By Mr. WALSH.—Let us not go into that matter again.

By Mr. MAYNARD.—Why not?

By Mr. WALSH.—Because you went into it.

By Mr. MAYNARD.—I went into it?

By Mr. WALSH.—Yes, you went into it until I said you had exhausted my patience beyond all reasonable bounds.

By Mr. MAYNARD.—I asked Mr. Cobban about it, and he told all about this matter. There is no question about that.

By Mr. WALSH.—You went into all that upon the examination of Mr. Griswold in chief, and you asked him when the subject was first mentioned.

A. There had never been such conversation in my presence.

Q. You may state when you heard for the first time, the claim made by Mr. Cobban that he was to locate people under the Stone and Timber Act, for and in consideration of the sum of one hundred dollars, and to take a mortgage on the land to secure the loan?

A. The first I ever heard of that since the instigation of this suit—was since the instigation of this suit something like a year ago.

(Testimony of Chauncey L. Griswold.)

By Mr. WALSH.—Since the instigation of this suit is very good.

Q. Who did you hear that from?

A. I heard it from Mr. Cobban. With the exception of one John B. Reeve, who testified to something of that kind in the testimony here. Those are the only two persons I ever heard mentioned.

Q. And when did you hear Mr. Reeve refer to it?

A. It was at the time he was giving his direct testimony here some three months ago, perhaps—something like that.

Q. And when did you hear Mr. Cobban first speak about it?

By Mr. WALSH.—He answered that question a moment ago.

A. I heard Mr. Cobban speak of it at various times during the trial.

Q. During this hearing, do you mean?

A. Yes, during this hearing.

Q. You may state if you ever heard him make any such claims as that previous to his going on the stand in this case?

By Mr. WALSH.—We object to that as leading.

A. I never did.

Q. What is the truth, Mr. Griswold, in regard to that matter?

By Mr. WALSH.—We object to that as being leading, and not proper rebuttal testimony.

(Testimony of Chauncey L. Griswold.)

A. Well, the facts of the case are, and the truth is, that there is no foundation for making any such assertion. That Mr. Cobban was to charge those parties a hundred dollars for locating them on this land. That is something that I know absolutely nothing about. If there was anything of the kind done, it was done without my knowledge.

Q. Well, what was, in truth, the arrangement that was made in regard to that subject matter between you and Mr. Cobban, Mr. Griswold?

By Mr. BICKFORD.—We object to that for the reason that it is not proper rebuttal testimony, and as being more repetition of the testimony that has heretofore been given by the witness upon his examination in chief, and upon behalf of the complainant.

A. The facts of the matter are that Mr. Cobban at my place in Clearwater, told me he would be willing to advance sufficient money to the different entrymen and entrywomen, to prove up upon their claims, and to pay their expenses in going to the land office. There was nothing said about parties securing him in any way, shape or manner.

Q. And, as a matter of fact, was such money left with you?

By Mr. BICKFORD.—We object to the question upon the ground that it is leading, and further, it is not proper rebuttal testimony, and the matter has been testified to by the witness, upon his examination in chief, the matter having been fully inquired into at that time.

(Testimony of Chauncey L. Griswold.)

A. There was money left with me at different times, and in different amounts. I don't know that I could recall the times or the amounts exactly, but it would range anywhere from a hundred to a hundred and twenty-five dollars. I don't remember that he ever gave me less than a hundred dollars, and I have a recollection of his giving me as high as two hundred and fifty dollars.

Q. Ever more than once, and if so, how many times would you say?

A. Well, I wouldn't like to say the number of times. I am quite certain it was four, if not more. My impression is that it was four different times that he paid me money.

Q. For what purpose did he pay you the money?

A. For the purpose of defraying the expenses of these different parties. At times I would run over the money that Mr. Cobban had left with me, and I would use my own money, but Mr. Cobban would always recompense me for that upon presenting a formal receipt, that I would take from the parties to whom I had paid the money.

Q. What do you mean by the words "paying your expenses."

A. Why, their necessary traveling expenses in going to the land office in Helena, the railroad fare, and hotel bills. And my recollection is that there was a time along at the beginning that the entrymen and entrywomen, some of them had to pay ten dollars into the

(Testimony of Chauncey L. Griswold.)

land office, but I am not positive about that; I wouldn't like to say about that.

By Mr. WALSH.—We want to have it understood that all of this testimony is being put in under the objection that it is not rebuttal at all; that it has all been gone into in the examination of the witness in chief, and he has been interrogated fully upon all these matters.

Q. Now, state, Mr. Griswold, again, the time—the time of the making of this contract, and where it says "that the said first party is desirous of acquiring title to good timber lands in Missoula and Deer Lodge Counties, Montana, and whereas the said second party through his location and acquaintance with the country, is in a position to acquire it for the said first party." You may state whether or not at that time that thing—at the time that language was incorporated into the contract, there was anything said by you to Mr. Cobban upon the subject matter of acquiring certain portions of that land, for the purpose of taking a mortgage upon it?

By Mr. WALSH.—That question is objected to for the reason that it is leading, and it is also irrelevant and immaterial, and not rebuttal for the reason that no testimony has been offered by the defendant that this land was to be acquired on a mortgage.

We have a further objection, if your Honor please, to this, and that is, that this has all been gone into on the examination of the witness in chief, and it is a mere repetition of the testimony that has been called from

(Testimony of Chauncey L. Griswold.)

the witness upon his examination upon behalf of the complainant in chief, and it is useless to occupy the time, money and energy in going into this matter again. The record shows that the same course was pursued in the examination of this witness on his examination before.

By Mr. MAYNARD.—And in answer to that I desire to say this: I don't desire to go into this matter at all, unnecessarily, but the position of the Government is this, that Mr. Griswold was a party to this contract, and we are prepared to, and desire to show, that he never heard that there was any such claim made by Mr. Cobban, or that any such claim would be made by the defendant, as has been made in this case.

By Mr. WALSH.—Mr. Griswold has testified to everything concerning conversations had between himself and Mr. Cobban on his examination on behalf of the complainant, and this is all a repetition of the testimony already given by him.

By Mr. MAYNARD.—Mr. Griswold will testify that he has never heard of such a thing until he heard it from the lips of Mr. Cobban upon the witness-stand, and the position of the Government is, that there is not a word of truth in it, and that it is proper for the Government at this time to show that such is the fact. It is simply desired, and it is for the purpose of rebutting that story of Mr. Cobban's, that he has given upon the stand here, and I propose to have Mr. Griswold answer that feature of his testimony. Now, isn't that rebuttal?

(Testimony of Chauncey L. Griswold.)

By Mr. BICKFORD.—No, because it may be that a thousand things or a million things may have happened that Mr. Griswold knows absolutely nothing about, and can testify nothing about. The fact that he doesn't know them isn't rebutting, or attempting to rebut the testimony given here by Mr. Cobban. The fact that Mr. Griswold didn't know of them, and testifies that he didn't know concerning them, does not rebut the testimony given by Mr. Cobban as to what actually took place; and the point which I now make is, that so far as this contract is concerned, that Mr. Griswold has in his examination in chief been called upon to testify, concerning the circumstances under which the contract was entered into, and all of the facts connected with the contract, and that it is not proper now to again examine him concerning that contract, his story, and his whole story having already been once told, and being of record in the case.

A. I am not going to be so unkind as to impute to Mr. Griswold the moral turpitude which you have reputed to Mr. Cobban in this matter, but I am going to assume, for the purposes of this particular objection, that Mr. Griswold has told the exact truth concerning that contract. Now, having been interrogated concerning that contract, and told all that he knew, we are now compelled to listen to it again, and to hear everything rehashed concerning that contract, when in fact he has already told everything concerning it.

We concede that counsel for the Government may ask the witness as to any new facts within his knowledge

(Testimony of Chauncey L. Griswold.)

concerning this contract, that his attention was not brought to at the time when he was on the witness-stand before, but counsel is now going ahead, and rehashing exactly the same matter and bringing out exactly the same statements from the witness, that have been brought out heretofore, and we insist that it isn't competent, it isn't right, it isn't called for, and it isn't proper rebuttal testimony in any sense of the word.

By Mr. MAYNARD.—Now, my dear brother Bickford, I want to say in reply to this, that Mr. Cobban testified, and it appears upon the record, that the contract which he made with Mr. Griswold rested not only in this writing which is marked exhibit "A," but was partly in parol, and he testified further that certain matters were talked over between them; that certain matters were left out by inadvertence, and that it was in the conversation that he had with Mr. Griswold, that he told him as to what his instructions were in regard to the Stone and Timber—the locations made under the Stone and Timber Act. That was all brought out the first time through Mr. Cobban. Now, I am seeking to find out what took place in this conversation, or what modifications, or anything of the kind were made.

By Mr. BICKFORD.—There is a further objection to that because Mr. Cobban, or anybody else has never testified that he expected to acquire the land under a mortgage.

By Mr. MAYNARD.—What I mean by that is that the land was to be taken up by these entrymen and en-

(Testimony of Chauncey L. Griswold.)

trywomen, and Mr. Cobban was to be secured by a note and mortgage for the money that he loaned, and that he was to receive a hundred dollars for his services.

Q. What is the fact about that, Mr. Griswold?

A. There was nothing of the kind mentioned.

Q. You may state as to the different ways that this land was to be purchased, Mr. Griswold.

A. There was a small amount of the timber—

By Mr. WALSH.—I object to that question for the reason that the contract itself provides what was to be done; and if it does not provide what was to be done, the means whereby title to the land was to be acquired, so far as title to the land was to be acquired, then the question simply calls for a conclusion from the witness, drawn from the whole language generally, or else it calls for some conversation had with Mr. Cobban concerning the means whereby the title was to be acquired; and that any conversation that Mr. Cobban had—this witness should be asked what the conversation was that he had with Mr. Cobban.

Q. Please answer the question, Mr. Griswold.

A. There was a small amount of this timber that was obtained by Mr. Cobban that was patented, prior to the 22d day of May. I think I could mention the names of the parties from whom Mr. Cobban bought it.

Q. How much would you say there was of that?

A. In million feet?

Q. Yes.

(Testimony of Chauncey L. Griswold.)

A. My recollection is now that it was about six million feet. I believe that there were five claims, and then there was about thirty million feet of this timber that was acquired under the Scrip Act; that is, in my territory or the territory that I was in charge of, or that was allotted to me in the upper Blackfoot country, as well as a portion of the timber that I located for Mr. Cobban on Gold creek at his special instance and request.

Q. That is two different ways? A. Yes sir.

Q. And that makes about 36,000,000 feet?

A. Somewhere in the neighborhood of that; I should say between 36,000,000 and 40,000,000 feet. That is, according to the estimates furnished me by Mr. Cobban. And the balance of the timber was acquired under the stone and timber laws, amounting in all, that was located by me to about 138,000,000 feet.

Q. And just how was that acquired?

A. Under the Stone and Timber Act?

Q. Yes, sir. A. Why—

By Mr. WALSH.—That is rebuttal testimony too, is it?

By Mr. MAYNARD.—Yes, sir, certainly it is.

(Witness continuing.) Why, the greater portion of this land I examined prior to the entryman and entrywomen filing on it. What wasn't done by myself, was done by men in my employ under the terms and conditions of the contract that I was to receive five cents a

(Testimony of Chauncey L. Griswold.)

thousand for doing the work, and in some cases, men in the upper Blackfoot county, would come to me, and want to locate claims; and in a few instances, I gave them descriptions of the land, or went on the land with them myself, and in a great many other cases, Mr. Cobban would send people out there to take up lands, or send them to me to have me show them the boundaries of the land he wanted them to take up; and sometimes Mr. Cobban came himself, and went onto the lands with them—went onto lands that Mr. Cobban and I had previously examined.

Q. And the conversation you had with Mr. Cobban at the time, you may state if anything else was told you by him—just what you should do with these entrymen that he should send to you.

By Mr. BICKFORD.—We object to the question upon the ground that it is leading, and irrelevant and immaterial, and hearsay and not rebuttal testimony.

A. No, sir, I believe there was nothing said. At the time of the signing of the contract, the only thing in particular was in regard to the territory that was assigned to me. That I have a distinct recollection of now.

Q. And for what purpose, as Mr. Cobban informed you, were these locations made under the Stone and Timber Act, and the Scrip Act?

By Mr. WALSH.—We object to that as not being rebuttal testimony, as to what Mr. Cobban's purpose was, and it simply calls for a conclusion from the witness.

(Testimony of Chauncey L. Griswold.)

Q. That is what he told you, is it?

By Mr. WALSH.—We object to that as being leading, and as stated before, as not being proper rebuttal testimony, and as calling for a conclusion from the witness.

Q. If there was any other purpose please state it, that you ever heard from him.

By Mr. WALSH.—We make the same objection to this question as to the preceding one.

A. There was no other purpose mentioned to me.

Q. And in pursuance of that purpose I wish you would state again, so that there may be no misunderstanding in regard to it, after having heard Mr. Cobban's testimony, in pursuance of that, what were you authorized to say to these people that you made locations for?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and not calling for rebuttal testimony, the matter having been fully gone into upon the direct examination of the witness, upon his examination upon behalf of the complainant in chief, and being of the very substance of the claim made by the Government in its case in chief herein.

A. I was to give the entrymen and entrywomen to understand that Mr. Cobban would pay all the expenses incurred in acquiring title, and give them a hundred dollars over and above such expenses.

Q. When?

(Testimony of Chauncey L. Griswold.)

A. Upon transferring the land to him, or to whom he might elect.

Q. Was that instruction, the instruction which you received from Mr. Cobban, carried out by you?

By Mr. BICKFORD.—We object to the question for the reason that it is not proper rebuttal testimony, the matter having been fully gone into in the direct examination of the witness upon the introduction of the case of the Government in chief, and further, as calling for a conclusion from the witness.

By Mr. MAYNARD.—I will withdraw that question.

Q. After you received your authority and instruction from Mr. Cobban, you may state what you did.

By Mr. WALSH.—One moment; I don't think that at this time we ought to sit here and listen to this testimony. I don't think it is proper, and I don't think it is rebuttal testimony. He is asked to go on and state what he did in carrying out these alleged instructions from Mr. Cobban.

By Mr. MAYNARD.—I have no desire to go into the matter at all, and I would stop now, this minute, if I thought that my brethren hereafter, before Judge Knowles, or before the United States Circuit Court of Appeals would not criticise me, and say that the testimony of Mr. Cobban must be taken as true, because I made no effort whatever to answer Mr. Cobban's contention, or to rebut the claim which he made. I know that they would do that.

(Testimony of Chauncey L. Griswold.)

By Mr. WALSH.—Well, that is entirely aside from this question. The witness is now asked, what he did in pursuance to those instructions.

Q. What I want to know is, and you heard it to-day, if you carried out those instructions, that is all. And in lieu of what the stenographer is now taking down I will simply ask you for the purpose of facilitating this examination, as to whether you did carry out those instructions?

By Mr. BICKFORD.—We still object to the question, in the first place, as being leading, and in the second place, as being irrelevant and immaterial, and not rebuttal testimony.

A. I surely did.

Q. For how long a time?

A. My recollection is that it was about four months.

Q. What four months were those?

A. June, July, August and September.

Q. You heard the testimony of Mr. Cobban this morning, saying that he had paid out money upon your order, and the order of the men that you hired, did you not?

A. Yes, sir.

Q. You may state whether or not the men that you hired were given instructions.

A. They were in all cases, yes, sir.

Q. What were those instructions?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and hearsay, and

(Testimony of Chauncey L. Griswold.)

not proper rebuttal testimony, the matter having already been gone into in the examination of the witness on behalf of complainant.

Q. With reference to the similarity of the instructions that you had received from Mr. Cobban?

By Mr. BICKFORD.—We object to that question also upon the ground that it is not rebuttal testimony, the witness already having testified fully with reference to the instructions that he gave men that were in his employ as he testified.

A. They received instructions from me verbatim as Mr. Cobban had given them to me.

Q. At the lapse of the four months that you have referred to, are you able to state as to how many locations had been made by the people that are named in the bill of complaint in this case?

A. Well, I believe that nearly all of them had been located.

Q. Well, what modification did you make, if any, after the lapse of time that you have referred to?

A. I didn't make any modification at all.

Q. You may state as to whether or not, in the cases of those entrymen and entrywomen that are named in the bill of complaint, that you, yourself located, as to what course was taken by you with them, with reference to the instructions that you have referred to?

By Mr. BICKFORD.—We object to that as not proper rebuttal testimony, for the reason that the same subject has been fully inquired into heretofore, has been

(Testimony of Chauncey L. Griswold.)

gone into fully by the witness, and he has testified concerning this matter in full in his examination in chief.

A. In all cases the entrymen and entrywomen would come to me, and ask to be located on timber lands, and I would in all cases tell them just exactly what the instructions were from Mr. Cobban to me, namely, that he was to pay their expenses and give them a hundred dollars upon their making final proof and transferring the land to him, or to whom he might elect. Some of them would go on under these conditions, and some of them would refuse, saying the amount was too small. In all those cases I turned these people over to Mr. Cobban, and to the best of my recollection Mr. Cobban satisfied them; at least, they went on and took up the claims, and what price was paid them I do not know.

Q. Did you hear Mr. Cobban's testimony yesterday with reference to the Mickels—the Arnold Mickels' claim? A. I did.

Q. It just comes to my mind now. You may state as to whether or not Mickels was one of the cases in which you had a conversation with him in regard to that matter? A. Yes, sir.

Q. State what there was about that.

A. Mr. Mickels came to my place from his home, or his logging camp, in the vicinity of Seely Lake, on the Clearwater, and wanted to take up claims, one for himself, and one for his wife. He was very desirous that I should go with him, but I couldn't go, I was busy at some other place, and I gave him a diagram of the

(Testimony of Chauncey L. Griswold.)

township, and told him where to go, and told him where he could find the location, even told him the number of the section, and the township that I thought he could get a claim in. He went there, and the first trip he wasn't successful, and he went back again, and found something that suited him. He came back and wanted to know from me what there was in it for him, and I told, him, according to my instruction, a hundred dollars over and above expenses.

Q. A hundred dollars over and above expenses?

A. Yes. And he thought that that was hardly enough, and I told him to go and see Mr. Cobban. I think he did so. Of course I have no way of knowing whether he did or did not.

Q. Did you have a conversation with him afterwards? A. I did.

Q. What did he tell you?

By Mr. WALSH.—We object to that for the reason that it is hearsay, and irrelevant and immaterial, and not proper rebuttal testimony, the witness having testified to precisely the same facts in his examination in chief upon the introduction of the case upon behalf of the Government.

A. Shall I go on?

By the EXAMINER.—Yes, you may answer the question now.

A. He told me that notwithstanding the fact that Mr. Cobban hadn't offered him as much as he thought he

(Testimony of Chauncey L. Griswold.)

could get from the Blackfoot Milling Company, that he would take it for the simple reason that if he sold to the Blackfoot Milling Company, he could only get credit on a debt that he owed them, and if he sold to Mr. Cobban he would get so much in cash.

Q. Did he tell you how much he was going to get from Mr. Cobban, or what he did get?

A. He did not.

Q. You may state whether or not you know anything about a certain portion of Mrs. Mickels' entry being rejected.

A. From the time that Mr. Mickels filed, and prior to the time of making final proof, Mr. Cobban had the land examined, and the estimators didn't find but a small amount of timber on Mrs. Mickels' claim, and therefore it was rejected and thrown out.

Q. Who rejected it?

A. Why, Mr. Cobban.

Q. In regard to that matter, Mr. Griswold, what have you to say as to—if you know, in regard to the entrymen and entrywomen that you located, as to what interest they had in the timber, or the amount of timber on the lands that they located?

By Mr. WALSH.—We object to that for the reason that it is calling for a conclusion from the witness merely, and it is not rebuttal testimony.

A. Why, they had no interest whatever. If I would approve of their selection, it made no difference to them;

(Testimony of Chauncey L. Griswold.)

they were getting so much for their claims, and it didn't make any difference to them how much timber there was on it; it didn't make any difference to them whether there would be much or little timber on it.

Q. That is, there was no other interest in it for them than the interest they would get from this hundred dollars, and to get a claim that Mr. Cobban would buy?

A. That is all, yes, sir.

Q. Now, you heard Mr. Cobban's testimony this morning in regard to their naming the witnesses, did you not? A. Yes, sir.

Q. Well, what is the truth in regard to that?

By Mr. WALSH.—We object to that for the reason that the witness has already testified to that in detail with reference to their claims, and concerning which he has any knowledge. Further, it isn't rebuttal testimony. He told in each individual instance how the witnesses were named, upon his examination in chief on behalf of the complainant.

By Mr. MAYNARD.—Yes, my dear friend, but Mr. Cobban said point-blank that he supposed these people named their own witnesses, on their own motion.

By Mr. WALSH.—Mr. Griswold has also testified here to the contrary already.

By Mr. MAYNARD.—I propose to show that Mr. Cobban, in some instances named the witnesses, and that Mr. Jemison named some of them, and that Mr. Gris-

(Testimony of Chauncey L. Griswold.)

wold named some of them, and to show that these four entrymen and entrywomen didn't know anything about it, and didn't care anything about it; and that it was a matter of utter and complete indifference to them, and that they were ignorant about it, and that they just simply took down the names of the witnesses given them by Mr. Cobban, and Mr. Jemison, and Mr. Griswold, and had nothing whatever to do with naming them themselves.

By Mr. WALSH.—You did go into that in the examination of Mr. Griswold in your case in chief, and he testified about it in each individual case, and as to each individual entry; you took the bill of complaint in this case, and you took it up entry by entry, and you asked him who the witnesses were, and how they came to be named.

By Mr. MAYNARD.—I think I may have asked him how they came to be named—if they were named.

By Mr. WALSH.—Yes, and you asked him how they came to be named.

By Mr. BICKFORD.—I hardly think it would strengthen your case to have these matters repeated now.

By Mr. MAYNARD.—If, as a matter of fact, it is already covered, it is perfectly good, and it will do no harm.

By Mr. BICKFORD.—Each entry, as Mr. Walsh has

(Testimony of Chauncey L. Griswold.)

said, was taken up by this witness, in his examination in chief, and the questions propounded to him as to how they happened to be named, and who named them, and all about it.

By Mr. MAYNARD.—The only purpose in the world, that I am trying to do this is, that I do not wish to leave any more loopholes for you gentlemen to go through than I can help. I am conscious of the fact that I am leaving a number, and that you will find them, and make the best you can out of it.

By Mr. BICKFORD.—We make the statement here now on the record, and if there is a loop-hole, and you can point to it, we can be precluded from taking advantage of it upon the hearing.

By Mr. MAYNARD.—Now, then, if as a matter of fact, my brethren will concede that it is already met in the case, that Mr. Cobban did name himself in specific cases to which I propose to call Mr. Griswold's attention, as a witness, and the entrymen in that specific case knew anything about it, or cared anything about it, but that he just took the names of the witnesses that Mr. Cobban gave them. If they will concede that in other cases Mr. Griswold named the witnesses, and the entrymen in those cases accepted them, I am willing to let the matter rest in this condition.

By Mr. WALSH.—Well, we won't be able to agree upon that, though you had better go on with the examination of the witness.

(Testimony of Chauncey L. Griswold.)

Q. Go on, Mr. Griswold.

A. I heard his testimony in regard to that, and the fact of the matter was, that I named a great portion of the witnesses, and Mr. Jemison named some, and Mr. Kilbourn named some, and Mr. Cobban named some himself.

Q. Can you name a specific case where Mr. Cobban himself named the witnesses?

A. I can, yes, sir.

Q. What case was that?

A. There was one by the name of William Walsh, and one John Chattin and John White, I believe are the three parties named. I have a copy of this advertisement if I could refer to it. These parties were located in township 15 north, range 15. Mr. Cobban came back to Clearwater, and told me that he had used my name as a witness in two of the cases, I believe.

Q. Have you got the public advertisement in your possession, Mr. Griswold?

A. I have, yes, sir.

Q. Will you please show it to me?

A. (Witness hands counsel memorandum-book with printed advertisement in it.) Here is the first one, William Walsh, and the other one is there also.

Q. This one do you mean?

A. Yes, sir. This man, William Walsh, never made any final proof. He went insane between the time he made his application, and before the time came for him

(Testimony of Chauncey L. Griswold.)

to make his final proof, and I don't know who did get it.

Q. I desire to read this into the record.

By Mr. BICKFORD.—To all of which we object upon the ground that it is irrelevant and immaterial, and not proper rebuttal testimony. And upon the further ground that it does not appear from the bill of complaint in this case that any man by the name of William Walsh ever made any entry in the United States land office under the Stone and Timber Act.

By Mr. MAYNARD, reading as follows: (This is printed.)

TIMBER LAND ACT.

June 3, 1878.

NOTICE FOR PUBLICATION.

United States Land Office, Missoula, Montana, May 25th, 1899. Notice is hereby given, that in compliance with the provisions of the Act of Congress of June 3d, 1878, entitled "An Act for the sale of Timber Lands in the States of California, Oregon, Nevada and Washington Territory, as extended to all the public land States by Act of August 4, 1892, William Walsh, of Missoula, County of Missoula, State of Montana, has this day filed in this office his sworn statement, numbered 244, for the purchase of the north half of the northwest quarter of section number 24, in township number 15 north, range number 15 west, and will offer proof to show that the land sought is more valuable for its timber or stone

(Testimony of Chauncey L. Griswold.)

than for agricultural purposes, and to establish his claim to said land before the register and receiver, of the United States land offic of Missoula, Montana, on Friday, the 11th day of August, 1899.

He names as witnesses, Henry C. Chattin, John White and R. M. Cobban, all of Missoulafi Montana; and David Morris, of Potomac, Montana. Any and all persons claiming adversely, the above described lands, are requested to file their claims in this office on or before the 11th day of August, 1899.

ELMER E. HERSHEY,
Register.

First publication June 2d, 1899.

Q. In what paper was this published, Mr. Griswold?

A. In the "Missoulian," I believe. I wouldn't be sure whether it was the "Missoulian" or the "Garnet Mining News." The "Missoulian."

Q. Now, are there any others? Was John White standing on the same footing as William Walsh?

A. Yes, sir.

Q. The witnesses named in that notice, the notice being in all respects in its legal form, were, Henry C. Chattin of Missoula, Montana, R. M. Cobban of Missoula, Montana, C. L. Griswold of Clearwater, Montana, and David Morris, of Potomac, Montana? A. Yes, sir.

Q. Now, the next is who?

A. The next is Henry C. Chattin.

Q. The same notice is here that is in substantially the same language, and the witnesses named were John

(Testimony of Chauncey L. Griswold.)

White of Missoula, Montana, R. M. Cobban, of Missoula, Montana, and C. L. Griswold, of Clearwater, Montana; and David Morris, of Potomac, Montana.

Q. I see that you are named as a witness here, Mr. Griswold? A. Yes, sir.

Q. How did you happen to be named as a witness? Did you see any of these three parties?

A. Upon Mr. Cobban's return to my place with these three gentlemen, he told me that he had named me as a witness. I believe he said in two or three of the cases; that I was acquainted with the land having been on it with him prior to this time, and he thought he would use my name.

Q. Are you able to state any case where you named the witnesses? A. I am.

Q. What cases do you now recall to mind, Mr. Griswold?

By Mr. BICKFORD.—We object to the question upon the ground that it is not proper rebuttal testimony, this matter having been fully gone into by the witness in the examination of him by counsel for the Government, upon the case in chief, and further, it is irrelevant and immaterial to the issues in this case.

A. Why, I named witnesses for Gilles, Cloutier, Sperry and McConnell. I named witnesses for Belle Bryan, Gilles, Edgar Lehman, Thomas Bryan, Albert Jemison, Jacob F. Jemison; and there were one or two

(Testimony of Chauncey L. Griswold.)

others that I cannot recall their names. They were strangers to me.

Q. There are some other names on this other page of this book here. (Counsel for the Government hands witness a book, and directs the attention of the witness to certain parts of the book in which appears the names of parties.)

A. I also named the witnesses, or, assisted in the naming of the witnesses for the Dodds. I don't know that I could recollect them by their given names, but the land was located in sections six and eight of township 14 north, range 13 west. I either named their witnesses, or, assisted them in naming them.

Q. Mr. Griswold, when you say that you named the witnesses, will be kind enough to explain to me just what you mean by that?

A. Why, I wrote the names of the parties who would be witnesses in the making of the final proof, upon a piece of paper, and handed it to the entrymen or entrywomen, together with a description of the land.

Q. And what, if anything, did they have to do about it? A. Nothing on earth.

Q. Now, you heard Mr. Cobban's testimony in regard to the circumstances of your appearing as a witness at the time several of these parties made final proof at Helena, and at Missoula, did you not?

A. Yes, sir.

Q. I wish you would be kind enough to tell me what

(Testimony of Chauncey L. Griswold.)

the truth is in regard to that matter? How did it happen that you were there?

By Mr. WALSH.—We object to that upon the ground that it is not proper rebuttal testimony, the matter having been fully inquired into by counsel of the witness, and the introduction of the case in chief on behalf of the Government, and it is merely a repetition of the testimony, and does not in any way tend to rebut any any of the testimony offered by the defendant.

A. A great many times I came at the instance and request of Mr. Cobban to appear as a witness in making the final proof. I wouldn't say that at all times he requested me to come, but I always came in his interest, and for him, and usually defrayed the expenses of the different entrymen and entrywomen and their witnesses from Missoula here and return, and to Missoula and return, out of funds that Mr. Cobban had given me for that purpose.

By Mr. WALSH.—We had that fifteen or twenty minutes ago, I believe.

Q. In what cases, if any, Mr. Griswold, did you come on your own motion, or by reason of being requested by the entrymen?

By Mr. BICKFORD.—We object to that as not being proper rebuttal testimony, and for the reason that the witness has already been questioned fully in regard to that matter in his testimony in chief, when upon the

(Testimony of Chauncey L. Griswold.)

stand before, and it is in no sense proper rebuttal testimony.

Q. Outside of your employment in connection with the case, Mr. Griswold—

By Mr. BICKFORD.—We make the same objection to this question, as we did to the previous question, namely, that it is not rebuttal testimony, and has already been gone into.

A. I didn't come one time.

Q. Not one? A. No, sir, not one.

Q. How many times did you come by reason of having been requested by the entrymen or entrywomen themselves?

A. Well, I wouldn't attempt to answer that with any degree of accuracy.

Q. What did you say?

A. I wouldn't attempt to answer that with any degree of accuracy. I don't know how many times I did come here. I was here very often.

Q. I mean outside of your employment by Mr. Cobban under the contract?

A. Why, none, I didn't come at all, not once.

Q. In what case were you paid any sum by any entryman or entrywomen that is named in this case, for any work that you did?

By Mr. BICKFORD.—We also object to that upon the ground that it is irrelevant and immaterial, and it is not proper rebuttal testimony, and it has already

(Testimony of Chauncey L. Griswold.)

been gone into thoroughly by counsel, and the same question asked of this witness in the examination of him on the complainant's own case.

A. There never was an entryman or entrywoman paid me one single cent for services that I had rendered them in making their final proof.

Q. If so, state what interest you had in any one of these cases, outside of your business relations with Mr. Cobban?

By Mr. WALSH.—We object to the question for the reason that it is not proper rebuttal testimony; all of these matters having been fully inquired of by counsel for the Government in the presentation of the case on behalf of complainant, and it is merely a repetition of the testimony, and is not in rebuttal of any new matter called out by the defendant.

A. That was the only entire interest that I had.

Q. You may state, if at any time in your life, in any statement that you rendered him, or any account that you received from him, there was any reference made by Mr. Cobban, to loans that were to be made by him on these lands.

By Mr. BICKFORD.—We object to that because the statements themselves are the best evidence of their contents, and it is not proper rebuttal testimony.

A. To the best of my recollection there was never anything of the kind mentioned or written in any statement.

(Testimony of Chauncey L. Griswold.)

Q. State from the beginning to the end of your business relations with Mr. Cobban, whether you saw any receipt or memorandum, given by the entrymen or entrywomen, in which there was any reference made to a mortgage or note?

A. I never did see anything of the kind.

Q. You may state if you ever heard of anything of the kind until Mr. Cobban testified in this case?

A. That is the first that I have ever heard of it, with the exception, as I have stated before, sometime about the latter part of August, or the first of September, 1899, when Mr. Cobban did say to me that if I advanced any money after that, that it was to be as a loan. That is the first I ever heard of it.

Q. Just what do you mean by that? Was that all he said to you?

A. Well, no, sir, there were other conversations.

Q. Well, what was there about that; I just wanted to know about that?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial and hearsay and not proper rebuttal testimony, and we make the special objection to it, for the reason that the witness was inquired of fully concerning the conversation had with Mr. Cobban that he now refers to—the whole conversation.

By Mr. MAYNARD.—I challenge counsel for the de-

(Testimony of Chauncey L. Griswold.)

fendant to find that particular testimony in the record if they can.

By Mr. WALSH.—Well, it certainly is there in almost the identical language.

By Mr. MAYNARD.—Yes, I don't question that at all, but whether it was made in good faith, or whether Mr. Cobban already said that simply because he was frightened and it was a mere subterfuge or not, that is the question.

By Mr. WALSH.—We object to counsel for the Government making any such suggestion to the witness, or making any suggestion to the witness as to the answer he thinks the witness ought to make.

A. Shall I go on?

Q. Yes, you may go on?

A. At this time and place, namely, at Mr. Cobban's office, in Missoula, he said to me, that there might be some future question arise in regard to the manner in which he was acquiring this timber, and made a talk along that line, and at this time he told me, that an advance in the money, to say to the different entrymen and entrywomen, that he would advance the money as a loan, and have it so understood by the parties who were acquiring the land.

Q. Do you remember whether you did or did not?

A. Well, I don't remember of ever having seen a cent loaned after that time, or of ever loaning a cent.

(Testimony of Chauncey L. Griswold.)

By Mr. WALSH.—We object to that upon the ground that it is not rebuttal testimony, and we therefore move to strike out the answer of the witness for that reason.

Q. You may state as to whether or not the conversation was that while that word was to be used, the arrangement about doing it was to be continued?

By Mr. WALSH.—We object to that upon the ground that it is leading, and that it calls for a conclusion from the witness, and not for a fact.

Q. If it was carried out?

A. I received no further instructions, or different instructions, from what I had received, only as to the loaning of the money from that time on.

Q. On page 4925 of the record, Mr. Cobban, said, "I gave Mr. Griswold instructions that I would loan to responsible parties wherever the timber would justify the amount of money necessary to pay their expenses, where they needed it, or where they wanted enough to pay for their land, I would furnish that amount of money as a loan to these people, to be secured by a mortgage, after they had proven up on the claim." I will ask you to state whether you ever received any instructions as that? A. I never did.

Q. What is the fact about it?

By Mr. BICKFORD.—We object to that for the reason that it is not rebuttal testimony, the same subject having been thoroughly gone into by counsel of the

(Testimony of Chauncey L. Griswold.)

Government in the examination of this witness in chief.

Q. Did you hear anything of that kind in this connection?

By Mr. BICKFORD.—We object to that for the reason that it is not rebuttal testimony, the same subject having been thoroughly gone into by counsel for the Government in the examination of this witness in chief.

A. I never heard anything of the kind until this testimony was being taken, more than the fact that Mr. Cobban instructed me, and informed me that he would advance or furnish the money required in completing the proofs upon these different descriptions of land that are mentioned in the bill of complaint in this case.

Q. With the condition of what, if any?

A. With the condition that the land should be transferred to Mr. Cobban upon making final proof, or to whom he might elect.

By Mr. BICKFORD.—We move to strike out the answer of the witness for the reason that it is not rebuttal testimony, the same subject having been thoroughly gone into by counsel for the Government in the examination of this witness in chief.

By the WITNESS.—As soon as possible after making final proof.

By Mr. BICKFORD.—We also move to strike out that

portion of the witness' answer for the reasons last heretofore stated.

Q. On page 4926 of the record in this case, Mr. Cobban said: "I told Mr. Griswold numerous times, and consulted him about that, that he must be very careful and not say anything that would indicate to any person that we would purchase the land. That there must be no agreement that we would purchase the land, or that I would purchase the land.

Q. When did you first say so to him, with reference to the time that he first went to work with you?

A. Well, sir, he first went to work for me—when he first went to work for me, and at numerous times thereafter, it was well understood, and there was no doubt on that score, that he knew thoroughly that it was my instructions at all times."

—What have you to say as to whether or not that testimony is true?

By Mr. WALSH.—We object to that upon the ground that it is not proper rebuttal testimony, the full matter having been gone into upon the examination of this witness in chief.

A. If it is true my memory is very defective, and I don't think that it is.

Q. You may state as to whether or not you ever received any such instructions?

By Mr. WALSH.—We object to that also as leading, and not proper rebuttal testimony.

(Testimony of Chauncey L. Griswold.)

A. I never did.

Q. When did you ever hear anything of such a character as this for the first time?

By Mr. BICKFORD.—We object to that also upon the ground that it is not proper rebuttal testimony, and further it has already been fully gone into in the examination of the witness on behalf of the Government, and it is merely a repetition of the testimony already given.

Q. On page 4927 of the record in this case, Mr. Cobban says: "I sought only to buy lands that had been taken up under the Scrip Act, and lands that had been proved upon, and after final proof, and that were held by a receiver's receipt, or a United States patent." With reference to that, Mr. Griswold, what have you to say about the lands that had been proven up on, and after the final proof was made; were they lands under the Stone and Timber Act?

A. Yes, sir, there was only one piece of land in my territory that I can call to mind now that was subject to a timber and stone entry, that was taken up with scrip.

Q. On page 4972 of the record in this case, the witness says, in answer to the question: "Now, why, at the time that you met Mr. Griswold, and entered into this written contract in duplicate, did you have part of it rest in parol." To which he answers:

A. For the very reason that on that day there was

(Testimony of Chauncey L. Griswold.)

a great deal of conversation preceding the drawing of the agreement, and a great many things were talked about at that time, and when it came to drawing the agreement, the time was very short. My recollection is that I left that afternoon, and only had something like two hours, a short time in which to prepare the original and the copy, and in the writing of that agreement, a number of things which had been agreed to and talked over, were not made a part of the written instrument."

—You may state as to whether or not at any time, in that conversation that you had with Mr. Cobban, or in any conversation that you had had with Mr. Cobban, at the time of the making of this contract, anything was said to the effect that he would locate people in consideration of them paying him a hundred dollars?

A. There was nothing of the kind said or mentioned.

Q. When was the first time that you ever heard from Mr. Cobban's lips, any such claim as that, Mr. Griswold?

By Mr. WALSH.—We object to that for the reason that the witness has already upon this examination, and upon his examination in chief upon behalf of the complainant answered the question several times.

By Mr. MAYNARD.—We propose to rub that into you. The only place where I will agree to be mutual in the courtesies in such matters as this will be in this room, and it isn't to be when we come to argue the case

(Testimony of Chauncey L. Griswold.)

before Judge Knowles, or before the Circuit Court of Appeals.

By Mr. WALSH.—When it comes to a question as to the credibility of the testimony of Mr. Cobban and Mr. Griswold, we are willing to stand upon the testimony of Mr. Cobban every time.

A. The first I ever heard of that is since the commencement of this trial.

Q. On page 4974 of the record, Mr. Cobbam testified: "The principal thing that he was employed to do, was to find out who had titled land to sell, or where he could take an option on the same at a reasonable price, to do so, and turn it over to me. He was also to look and report to me where there were good bodies of timber that could be scripped, or that were available Government lands; those were the principal things that he was employed to do."

You may state whether or not, Mr. Griswold, in that answer, there was embraced the location of people under the Stone and Timber Act?

By Mr. BICKFORD.—We object to that as calling for a conclusion from the witness and not for a statement of fact.

By Mr. WALSH.—And asking this witness to put a construction upon instructions given to other persons.

A. The principal part of my work was the finding of claims that could be taken up under the Stone and

(Testimony of Chauncey L. Griswold.)

Timber Law. There was very little patented land in that section of the country. My recollection is that there were five claims of patented land that Mr. Cobban acquired through me.

Q. The principal part of your work as you say was in locating people on lands to be taken up under the Stone and Timber Act, as you have testified?

By Mr. BICKFORD.—We object to that for the reason that it is calling for a conclusion from the witness and not for a statement of fact; further upon the ground that it is not rebuttal testimony, but is a matter which has been fully testified to by the witness upon his examination in chief in this case.

A. Yes, sir.

Q. On page 4997 of the record in this case, the question was asked the witness, Mr. Cobban: "Wasn't it a part of Mr. Griswold's employment under the contract, to cause it to be known throughout that country, that persons could make entries under the Stone and Timber Act?

A. No, sir, it was not.

Q. That was no part of his employment?

A. No, sir, in no way, shape or manner."

—What have you to say as to the fact, Mr. Griswold?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper rebuttal testimony, the witness Griswold having been interrogated fully concerning that matter in his examination in chief.

(Testimony of Chauncey L. Griswold.)

By Mr. WALSH.—Yes, and if the counsel will give me five minutes, I will refer him to the testimony in the record, and show him where this question was asked and fully answered by the witness.

A. I take it that it was a portion of the work that I was to perform under the contract, letting it be known throughout the country that there were claims to be taken up, and money to be furnished for the purpose of defraying the expenses of filing upon the lands, and of making final proof in the cases.

Q. What, if anything, did Mr. Cobban say to you on that subject, as to his ability to furnish people to take up these claims?

By Mr. BICKFORD.—We object to all of this testimony, and particularly to this question, upon the ground that it is not proper rebuttal, and that in the direct examination of this witness, when the Government was introducing testimony in support of its own case, this matter was fully gone into, and fully testified to by the witness.

By Mr. MAYNARD.—I admit it. I wasn't asking the witness when it was. I am simply directing the attention of the witness to the answers of Mr. Cobban in his testimony, and calling his attention to the words of Mr. Cobban.

By Mr. BICKFORD.—We submit that the statement of counsel is an admission upon his part that he is

(Testimony of Chauncey L. Griswold.)

pursuing an improper course in the introduction of testimony.

A. I think a short time subsequent to the signing of the contract, Mr. Cobban said to me in substance if not in exact words, that he could send me more people from Missoula to locate claims, or were desirous of locating claims under the Stone and Timber Act, at a price ranging from fifty to a hundred dollars, than I could possibly find claims for, and that I should in no case promise anyone over that sum.

By Mr. WALSH.—If any weight was attached to Mr. Griswold's testimony at all, we should be entitled to put Mr. Cobban back upon the stand, for the purpose of denying the statements made by the witness Griswold.

By Mr. MAYNARD.—You can do so, if you wish to.

By Mr. WALSH.—We have no right to do so.

By Mr. MAYNARD.—Well, I will give you the right.

By Mr. WALSH.—We state this, for the purpose of showing you that this testimony is absolutely improper at this time, as you yourself must recognize.

By Mr. MAYNARD.—You can have all the time you want to put in any testimony denying this.

Q. Did you know Charles Clontier?

A. I did, yes, sir.

Q. Did you know of his coming, to your place with Mr. Cobban? A. No, sir.

(Testimony of Chauncey L. Griswold.)

Q. Did you have anything to do with the location of Thomas Pelky?

A. Can you give me a description of the land? If you can I can tell you?

Q. Pelky and Chattin? (Counsel for the Government hands the witness upon the stand, a copy of the printed bill of complaint in this case.)

A. Yes, sir, I did.

Q. Did you make the arrangements with them, Mr. Griswold? A. No, sir.

Q. You have testified in regard to the matter, have you? A. Yes, sir.

Q. On page 5011, of the record, I read from the testimony of Mr. Cobban: Reading from the record on page 2407, "It appears that Chauncey L. Griswold, and B. Frank Chattin were Pelky's witnesses at the time of making the final proof. Do you know how Mr. Griswold happened to be a witness in this case?

A. I suppose that Mr. Pelky perhaps asked him to be; I cannot tell you.

Q. He wasn't sent there by you?

A. No, sir, not with the consent of the parties. Pelky or Chattin may have asked him. Which one are you asking about?

Q. Pelky.

A. I presume he asked Mr. Griswold at that time, whether he would act for him. I don't know.

Q. You say that Mr. Griswold, by reason of his em-

(Testimony of Chauncey L. Griswold.)

ployment for you under the contract, went there as a witness? A. I don't say that.

Q. What do you say now, whether he did or did not?

A. No, sir, not by reason of his employment by me."

—You may state as to how you happened to be a witness in that case for Mr. Pelky? Was it, or was it not by reason of your employment by Mr. Cobban?

By Mr. WALSH.—We object to that for the reason that it is not proper rebuttal testimony, the matter having been thoroughly gone into by the Government upon the examination of the witness Griswold, when he was upon the stand to testify in chief upon behalf of the Government. And it is merely a repetition of the testimony already in the case, and can serve no useful purpose whatever.

A. Well, it was surely by reason of my being employed by Mr. Cobban; and my recollection is now that I was in Helena, when those two gentlemen came from Missoula here to make their final proof. I think there was some proofs made the day prior to their making final proof, or one or two days prior to their coming here, in which I was a witness, and I remained here until after they had made their final proof.

Q. Continuing further on the same page, Mr. Cobban says: "I haven't said that I did request him, and I don't think that I did. If I did it was because Mr. Pelky requested that he be his witness." Did Mr. Pelky request you to be his witness?

(Testimony of Chauncey L. Griswold.)

A. I have no recollection of it. Mr. Pelky was an entire stranger to me.

Q. Did he pay you anything for it?

A. No, sir, not a cent.

Q. Also quoting from the record on the same page: "Acting under the consideration of a hundred dollars for locating these people, was to give them what assistance I could in making their entries, and with that understanding it was very natural that they would consult me and ask me who would be their witnesses, and it may be that I suggested those names. It might have been at my suggestion."

—If I understand you, this consideration of a hundred dollars was never brought to your attention?

By Mr. WALSH.—We object to that for the reason that it is not proper rebuttal testimony, the matter now inquired of the witness having been asked him when he was on the stand on behalf of the Government, and it being merely a repetition of the testimony already given.

A. Never was, no, sir.

Q. And right here you may state as to whether or not, in the cases where it appears of record, that you brought the deeds prepared as testified by the entrymen where you brought them, what, if anything, was said by you to the entrymen or entrywomen in advance about their giving a mortgage to secure the payment of the loan? A. Not one word.

(Testimony of Chauncey L. Griswold.)

Q. Did you ever hear of any such thing as that?

By Mr. WALSH.—We object to that for the reason that it is not proper rebuttal testimony, the matter now inquired of the witness having been asked him when he was on the stand on behalf of the Government, and it being merely a repetition of the testimony already given.

A. Never heard of anything of the kind until the taking of this testimony in this case. The first time I ever heard the word mortgage mentioned in connection with these claims was when Mr. Lehman refused to deed to Mr. Cobban, for and in consideration of a hundred dollars. Then at that time Mr. Cobban told Mr. Lehman that if he didn't choose to deed he should give him a note with a mortgage to secure it, on the land for the money he had advanced. That is the first time the word "mortgage" was ever used that I ever heard it. And the next time I ever heard the word "mortgage" mentioned in this case, was in the taking of the testimony before the Honorable Examiner.

Q. And in the Lehman case, was the first time, as I remember the testimony in the record, when Mr. Cobban said Mr. Lehman undertook to hold him up?

A. Yes, sir, or words to that effect.

Q. Those are the exact words that he used?

By Mr. WALSH.—That is rebuttal testimony, too, I suppose, Mr. Maynard?

By Mr. MAYNARD.—Yes, sir.

(Testimony of Chauncey L. Griswold.)

Q. On page 5027 of the record in this case the witness says, referring to Mr. Cobban, "As to Mr. Griswold, Mr. Griswold's instruction was positive, that he never should make an offer, or talk about buying a claim, before a person had a right to sell the same. And if he ever did that, it was certainly contrary to my instructions."

—What is there in regard to that matter, Mr. Griswold, is that so?

By Mr. BICKFORD.—We object to that for the same reason, namely, that it is not proper rebuttal testimony, and when this witness testified in his examination in chief he testified to all the conversations that he had with Mr. Cobban at that time, or at any time. And he was thoroughly interrogated as to whether there were any other conversations that he had had that he had not testified concerning.

Q. Did you ever receive such instruction from Mr. Cobban, Mr. Griswold?

By Mr. BICKFORD.—We object to that upon the ground that it is leading, and that it is not rebuttal testimony, and when this witness testified in his examination in chief he testified to all the conversations that he had with Mr. Cobban at that time, or at any time. And he was thoroughly interrogated as to whether there were any other conversations that he had had that he had not testified concerning.

A. I never did; no, sir.

(Testimony of Chauncey L. Griswold.)

Q. I call your attention to Mr. Moss' claim. Do you know Mr. Charles H. Moss?

A. Well, I know him by sight. I have no personal acquaintance with him.

Q. You have no recollection of his final proofs in the case?

A. No, sir; I don't think I can call to mind anything about his final proof.

Q. On page 5068 of the record in this case, the witness Cobban, in his testimony said, in answer to the question: "Well, hadn't Mr. Griswold, before this time mentioned those claims to you?"

A. No, sir, he had condemned that part of the country. I don't think he was ever in there. He might have been in there but he certainly condemned it.

Q. Well, now, didn't Mr. Griswold report to you, and wasn't it the basis of his condemnation, that, while the timber was good enough, that it was inaccessible, and that it was rocky and steep, and that it would cost upwards of a thousand dollars to open a road by which the timber could be brought down to the river. Wasn't it solely on that ground? A. I cannot say as to that."

—Do you recall the land that he refers to?

A. Yes, sir, it is land situated in sections 10, 2 and 4, in township number 15 north, of range 15 west, in what is known up in that country as "Lost Prairie," and it is entirely and altogether inaccessible. It would cost, in my judgment, ten thousand dollars to make a logging road from Clearwater to this timber.

(Testimony of Chauncey L. Griswold.)

Q. Had you been in there yourself?

A. I had been in there, yes, sir, several times.

Q. And, as a result of your examination, did you report to Mr. Cobban? A. I did, yes, sir.

Q. And for what reason did you condemn it?

A. I condemned it for the reason that the timber was light on the land, and of inferior quality, and its entire impracticability in getting it to the river.

Q. Were you, or were you not at that time acting in the interests of Mr. Cobban?

A. I was. I was on these sections ten and two of this same township and range with Mr. Bryan, Mr. Lehman, and Miss Lelia T. Bryan, for the purpose of selecting their claims, and I rejected it on account of the timber being light and the location of the timber.

Q. Calling your attention to page 5150 of the record, being the testimony of the witness, Cobban: "Now, I call your attention to the conveyance of the land named in the bill of complaint, to you, by Thomas H. McConnell and Charles B. Sperry. The entries were made at the same time, and final proof was made at the same time. The deeds were dated the same day, and the amounts named were the same. Now, with this information, have you any recollection whatever of the transaction had between you and these men?

A. Yes, sir, I have some recollection of it.

Q. What is that recollection?

A. Well, the recollection is that Mr. Griswold told

(Testimony of Chauncey L. Griswold.)

me that he had seen those parties, and they were desirous of making some location, and that they wanted a loan, and that he had told them that I would negotiate a loan for them, and when the time came around for the loan, I have no recollection now of ever having seen Mr. McConnell, until after the institution of these proceedings; but it was in accordance with the statements of Mr. Griswold to me that the loan was made to Mr. McConnell."

—What have you to say, Mr. Griswold, in regard to that testimony, as to whether or not they stood on any other basis than any other entrymen and entrywomen that you have knowledge of?

A. They stood on just the same basis as the others; there was nothing said about a loan. They were poor people, and they wanted these claims.

Q. For what purpose?

A. For the purpose of getting this land and of getting this hundred dollars for it.

Q. Was that fact reported to Mr. Cobban?

A. I told him that they wanted to take claims, I presume. I always told him about locating people, and of any locations that I had made.

Q. And you may state whether that was carried out.

A. It was carried out according to the understanding between Mr. McConnell and Mr. Sperry and myself.

Q. On page 5133 of the record in this case, Mr. Cobban says in his testimony: "Mr. Griswold was instructed that, where parties were reliable, that a loan could be made

(Testimony of Chauncey L. Griswold.)

to parties, provided the claim, after examination, were sufficiently valuable to justify a loan."

—What have you to say as to that testimony, Mr. Griswold, did you receive any such instructions?

By Mr. WALSH.—We object to that, for the reason that it is leading, and not proper rebuttal testimony.

A. The only party that I ever refused to locate was Mr. Reeve. They were all considered reliable up in that country.

Q. Well, I asked you as to whether or not this testimony was true, of Mr. Cobban's, in which he says that you were instructed, where parties were reliable, that a loan could be made to parties.

A. Oh, no, there was nothing of the kind.

Q. What did you say?

A. There was nothing of the kind. I received no such instructions.

Q. And on page 5155 of the record, Mr. Cobban says: "No, sir, I am not certain as to just what was done in that matter. I know I furnished money to them with the distinct understanding, as to a loan, either directly to them, or to Mr. Griswold, under his statement of the facts, that they were to secure the money by a mortgage, immediately after they had proved up."

—You may state as to whether or not that testimony is true, and you made such representations to Mr. Cobban?

By Mr. WALSH.—We object to that, upon the

(Testimony of Chauncey L. Griswold.)

ground that it is calling for a conclusion from the witness, and further, it is leading, and it is not proper rebuttal testimony, for the reason that the witness, when he was upon the stand, and testified in his examination in chief upon behalf of the Government, testified fully as to these matters.

A. No, sir, I never made any such statement to Mr. Cobban, or to any other person.

Q. What is that?

A. I never made such a statement to Mr. Cobban, or to any other person.

Q. If there was anything said by you during the whole life of your contract, and your arrangements with Mr. Cobban, just state it.

A. There never was any in connection with the timber business.

Q. Yes, I mean about the timber business.

A. No, there never was a word said about the timber business.

Thereupon the hearing was adjourned until ten o'clock A. M., Thursday, August 14th, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Thursday, August 14th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

C. L. GRISWOLD, recalled for complainant in rebuttal.

Direct Examination (Continued).

(By Mr. MAYNARD.)

Q. Mr. Griswold, I call your attention to Mr. Cobban's testimony relative to the Sperry and McConnell claims, and to his testimony that he gives on page 5159 of the record in reply to the question: "Now, isn't it true that the reason why you sent that notary up there into the country with the deed and with the check was because there had been an express contract and agreement made by you with him through your agent, Mr. Griswold, that he was to do that very thing? A. No, sir, it is not the case, and there was no such contract to my knowledge. Q. There was not any such contract? A. There was not. If Mr. Griswold had any contract of that kind it was certainly contrary to my instructions to him." Do you recall the fact, Mr. Griswold, of your connection with the Sperry and McConnell claims?

Mr. BICKFORD.—We object to that as not proper rebuttal, the whole subject of the McConnell and Sperry entries having been gone into in the testimony in chief, and the time has long since passed when the witness could be recalled or interrogated concerning anything in chief.

(Testimony of Chauncey L. Griswold.)

A. Well, that matter is very distinct in my recollection.

Q. Now, I don't care to go into it at length, Mr. Griswold; I just simply ask you if you have a present distinct recollection in regard to the matter?

A. I have, yes, sir.

Q. What have you to say, Mr. Griswold, in regard to Mr. Cobban's testimony that "If Mr. Griswold had any contract of that kind, it was certainly contrary to my instructions to him"?

A. Well, I have got this to say: There was no contract, but there was an agreement, and it was not in conflict with any instructions Mr. Cobban had ever given to me.

Q. And what was the agreement?

Mr. BICKFORD.—We object to the testimony, because it is not rebuttal testimony, and because the witness has been heretofore called upon to testify concerning any and all transactions had between himself and the parties mentioned.

A. The agreement was that we were to furnish the money to defray the expenses in obtaining titles to the lands, or final receipt, and were to give them one hundred dollars over and above the cost and expenses of so obtaining this receipt, and that they were to transfer the land immediately to Mr. Cobban, or to whom he might direct.

Q. Was that agreement carried out?

(Testimony of Chauncey L. Griswold.)

Mr. WALSH.—Objected to because it is not rebuttal, and also because it is leading.

A. It was, fully, yes, sir.

Q. And in accordance with what instructions?

Mr. WALSH.—Objected to as leading, and also not rebuttal.

A. With the instructions that I had obtained from Mr. Cobban prior to that time.

Q. On page 5165, the witness, Cobban, says: "Well, I have this simply to say, that if he was told that he was to receive any specified sum for his claim, it was absolutely contrary to any instructions that had been given to Mr. Griswold, or intimation on the part of Mr. Griswold to him. It was a transaction that I was not responsible for in any way, shape or manner, because I knew nothing about it, and if there was such an agreement, I knew nothing about it. Q. If there was such an agreement as that made between Mr. Griswold and Mr. McConnell, it was without any authority from you? A. Directly against my instructions to make any offer or any statement that I would purchase the land from any of these people." What have you to say to that?

Mr. BICKFORD.—We object to that as not rebuttal testimony, the subject having been gone over in full when this witness was formerly on the witness-stand, and is repetition of the question that was asked the witness less than five minutes ago.

(Testimony of Chauncey L. Griswold.)

Mr. MAYNARD.—I know that, but it is in answer to this specific question that I put to Mr. Cobban, and his answer.

A. I would say that Mr. Cobban never gave me any instructions not to make agreements to purchase this land until some time about the latter part of August or September of the year 1899, long after this McConnell deal was closed.

Q. On page 5168 the witness, Cobban, says, referring to the Sperry matter: "If there was any such agreement as you have stated, I knew nothing whatever of it, and I have reason to believe that there was no such agreement. Mr. Sperry himself says there was not, and Mr. Griswold certainly had no reason for making any such agreement, because he had positive instructions not to make any such agreement; but I presume that Mr. Sperry came there in conformity with his agreement to secure that by mortgage, and he may have had the expectation, after he had proven up, that he could sell the land to me." What have you to say as to that, as to whether or not, in carrying on these negotiations with Mr. Sperry in the interest of Mr. Cobban, anything had been said by him or by you with reference to a mortgage?

Mr. BICKFORD.—Objected to because it is not proper rebuttal, the whole subject having been gone into in the examination of this witness when upon the witness-stand for the Government, and for the further reason that he has heretofore and within a very short time testified as

(Testimony of Chauncey L. Griswold.)

to all the transactions with McConnell and Sperry, so it is mere repetition of the testimony heretofore given.

A. I will say that there never was any agreement or understanding between Mr. Sperry and Mr. McConnell and myself that they were to issue a mortgage, or that they received the money as a loan; but there was an agreement, not in writing, but verbal, whereby Mr. McConnell and Mr. Sperry was to transfer this land as soon after making final proof as possible to R. M. Cobban, or to whom he might elect.

Q. On page 5212 Mr. Cobban testified: "Well, I will say positively that there was no agreement with those parties, or with anyone else, before final proof was made, that they were to receive one hundred and ten dollars, or any other sum, from me, and not only was there no agreement from me, but as I stated before, those in my office, working for me, or having anything to do for me in any way, were instructed positively that there could be nothing said that would lead these parties to believe that they were to sell to me." What have you to say as to that testimony?

Mr. BICKFORD.—Objected to as not proper rebuttal, the same having been gone into in full on the examination of this witness in chief.

A. In regard to the men working in the office, I have nothing to say because I know nothing about it, but the men that were in the field had no such instructions.

Q. If they did not have such instructions, did they have other instructions?

(Testimony of Chauncey L. Griswold.)

Mr. BICKFORD.—We object to that because it is not rebuttal, and also because it is leading.

A. I cannot answer only for myself.

Q. Well, I mean answering for yourself, of course.

A. As far as I was concerned, I had instructions to go on and locate these people with the understanding that Mr. Cobban was to furnish the money to defray the expenses of acquiring title from the Government, or rather, a final receipt from the Government, and immediately after final receipt issued, they were to transfer to Mr. Cobban or to whom he might elect for and in consideration of his paying them one hundred dollars over and above such expenses.

Q. You have stated, I believe, that those instructions were communicated by you to other people?

Mr. WALSH.—Objected to as leading.

A. Yes, sir, I made no secret of it; I told it to every one through that country.

Mr. WALSH.—We move to strike out the answer as not responsive to any question.

Q. And specifically name, if you can, Mr. Griswold, the persons to whom you gave those instructions, that were working for you.

Mr. WALSH.—We object to that as not rebuttal, and I will show you the exact question and the answer to it in the testimony of the witness already given.

Mr. MAYNARD.—I will concede that.

Q. Go on, Mr. Griswold.

(Testimony of Chauncey L. Griswold.)

A. I told it to Albert Jemison; I told it to Kilbourn; I told it to Watson; I told it to my brother; I told it to Bryan; I told it to Gilles, to Charlie Cloutier and many others whose names I cannot now mention.

Mr. WALSH.—Inasmuch as you concede this, how do you justify yourself for putting it in?

Mr. MAYNARD.—I concede it to save time.

Mr. WALSH.—How do you justify yourself for bringing it in?

Mr. MAYNARD.—Simply because it is a direct answer to Mr. Cobban's testimony.

Mr. WALSH.—You certainly did bring it in in Mr. Griswold's direct testimony, and now you bring it in again.

Mr. MAYNARD.—Under the phase brought out by that testimony, yes. I haven't time to wait an hour to look through that testimony.

Mr. WALSH.—There won't be any concession simply for the sake of argument. If there is not going to be any concession, we will have it read into the record.

Mr. MAYNARD.—Well, you can point it out.

Q. Now, Mr. Griswold, calling your attention to Cobban's testimony, which appears in the record on page 5258—

Mr. WALSH.—Just a moment. I want to put this objection in the record. I show the identical question and the answer to it on page 151 of the record, as fol-

(Testimony of Chauncey L. Griswold.)

lows: "Q. Now, Mr. Griswold, you stated yesterday that you told several persons and caused it to be generally known throughout the region where you lived that men and women could make one hundred dollars clear by taking up entries under the Stone and Timber Act, if they would at once, after obtaining final receipt, transfer the same to Mr. Cobban. I wish you would tell me now, if you are able to state, and give the names of the persons that you said this to"? Objection by Mr. Bickford. "A. I told it to Thomas B. Bryan, Lelia T. Bryan, Edgar Lehman, Albert Jemison, Charles B. Sperry, Thomas H. McConnell, L. A. Wells, Lizzie Wells, John Gilles, Charles Clontier, and I presume to others; I knew that I told these parties."

Mr. MAYNARD.—It will be evident to the Court or to any one else that the question I asked was entirely different from that question and answer. One was with reference to the entrymen and entrywomen that he caused these instructions to be communicated to, and the question I asked was whether these instructions that he had received from Mr. Cobban were communicated to the men in his employ.

Mr. WALSH.—Read the question, please.

Question read.

Mr. MAYNARD.—The record speaks for itself.

Mr. WALSH.—Now what is the answer?

Mr. MAYNARD.—I am not responsible for the answer

(Testimony of Chauncey L. Griswold.)

Mr. WALSH.—I will show you the identical question now spoken of by the witness.

Mr. MAYNARD.—I don't care about that.

Mr. WALSH.—Namely, whether he communicated these instructions to the men in his employ.

Mr. MAYNARD.—I have met you on this proposition and shown that you are in error, and I am not going to have my time taken up by your going through that record.

The EXAMINER.—He has a right to put in his objection.

Mr. MAYNARD.—Well, let him put it in when he finds it; I can't wait all day for him to find it.

Mr. WALSH.—The question and answer with regard to the instructions and the communication of instructions to the men hired by Mr. Griswold can be found on pages 322 and 323 of the record.

Q. I call your attention to page 5258 of Mr. Cobban's testimony, referring to the Lehman transaction as follows "Q. And then, after Mr. Lehman refused to come when you sent Mr. Bryan, then you sent for Mr. Griswold and had them both go together? A. I don't know that I sent for Mr. Griswold, or whether I sent Mr. Griswold up there, but I think Mr. Griswold did go up. Q. Well, you think that he went and saw him on his own motion, volunteered to go, or went because he was directed to go by you? A. Well, I am not certain as to that. Mr.

(Testimony of Chauncey L. Griswold.)

Griswold was going back and forth by Bonner and through Bonner, and he might have been going up there to the woods, and I might have requested him to take Mr Bryan, and I might have asked him to go and see Mr. Lehman." Now, in reply to that testimony, Mr. Griswold, what have you to say as to whether or not you went there by accident,or simply because you were passing through Bonner, or in what way did you go?

Mr. BICKFORD.—We object to that for the reason that it is not proper rebuttal testimony, because the witness has heretofore when upon the witness-stand, testified in full concerning what he did in connection with the Lehman matter.

Mr. WALSH.—And said that he went by the express direction of Mr. Cobban.

Q. Answer the question, Mr. Griswold.

A. I went by the express request of Mr. Cobban and Mr. Bryan, and returned to Missoula from Bonner tha same day, and was present at the time of the conversation between Mr. Lehman and Mr. Cobban.

Q. Did you hear the conversation?

Mr. WALSH.—Objected to for the reason that it is not rebuttal.

A. The greater portion of it, yes, sir.

Q. Just what was that conversation?

Mr. WALSH.—Objected to as not rebuttal. The witness has already detailed the conversation.

(Testimony of Chauncey L. Griswold.)

Mr. MAYNARD.—I don't think he has referred to it at all.

Mr. WALSH.—I will show you that.

Mr. BICKFORD.—We make the further objection that it is hearsay.

Q. Have you testified as to the conversation, Mr. Griswold? I have no recollection of it.

A. I believe that I have, but I am not sure in regard to that. If I have, I am willing to duplicate the testimony.

Mr. WALSH.—The conversation will be found at page 125 of the record, where he told what Mr. Cobban said, that if he wouldn't deed, he should give a mortgage and so on.

Mr. MAYNARD.—Yes, that is right; thank you, Mr. Walsh.

Mr. WALSH.—Now, I will show you the other, if it will be any assistance to you.

Q. Do you desire to correct your answer, Mr. Griswold?

A. Well, in one particular, that Mr. Cloutier was not in my employ; he was simply boarding at my place.

Q. Mr. Griswold, calling your attention to the time when the deeds were made for Marion Watson and Harriet Watson, made here in Helena. Do you recall that transaction? A. I do.

Q. Mr. Cobban testifies on page 5333: "My recollection is that I was at the Cosmopolitan Hotel in the city

(Testimony of Chauncey L. Griswold.)

of Helena on the day that those proofs were made, and that I instructed Mr. Griswold or Mr. Catlin, I am not certain which one it was, to make them an offer for their claims after they had proven up, and the word came back to me that they would accept the proposition, and I think that I saw Mr. Watson and talked with the people myself before the conveyances were made, and my recollection is that I drew those deeds myself." Do you recall the facts and circumstances that the witness refers to?

A. I do.

Q. What have you to say as to that?

Mr. BICKFORD.—We object to that for the reason that it is not proper rebuttal testimony, the witness having in his testimony in chief gone fully into the transaction with reference to the purchase of the Watson lands, and testified as to all of his knowledge concerning the same.

A. The facts are,tothe best of my recollection, Mr. Catlin was not in the city at that time, and those proofs were made, and immediately upon making the final proof, or completing the proof on those three claims, Mr. Cobban handed me the deeds, prepared, and asked me to have them acknowledged before a notary public, and I took the three parties, Marion Watson, Katie Watson and Harriet Watson, before Mr. Frank Resse of this city, and there was some controversy arose in regard to the wording of some portion of the deed, just what I don't know, and I went to the office of the Collins Land Company, and requested Mr. Cobban to come up and

(Testimony of Chauncey L. Griswold.)

straighten out whatever difficulty there was, and he done so, and the deeds were left after acknowledgment in the hands of the parties who made the final proofs, and they took them to the Cosmopolitan Hotel. During the evening, sometime before dark, I should say about seven or half past seven o'clock, I said to Mr. Cobban in the office of the Cosmopolitan Hotel that these parties ought to have their money, that they might want to purchase something before returning to Clearwater or Missoula, and there at once he gave me three hundred dollars, directing me to give each one one hundred dollars and take the deeds, which I done, and transferred the deeds to Mr. Cobban immediately after that.

Mr. BICKFORD.—Now that, if your Honor please, is a mere repetition; your Honor will remember the words of the witness when he was on the witness-stand before. What there is to be gained by a repetition of the testimony heretofore given by the witness, it is very hard for me to understand.

Mr. MAYNARD.—I will only say, in reply to my brother Bickford, that ordinarily in the practice of my profession, I would not go into this detailed rebuttal and refer to Mr. Cobban's testimony; I would let the matter stand upon the record as already made. But I desire to have it appear of record that the sole reason why I go into the matter in detail is because I know from the course that has been pursued by counsel in this and other cases in which I have appeared against them, that

when the case comes to argument, they will surely call the attention of the Court to certain answers that Mr. Cobban made that are not replied to by Mr. Griswold, and claim that, not having done so, it was an admission that his testimony was true. I further desire to have it now recorded as a prediction that in many cases that I know, I have overlooked inadvertently and some intentionally, that that course will be pursued, and I desire to have it entered now for the purpose that I may have it with me to call the attention of the Court to it when those tactics are pursued.

Mr. BICKFORD.—We want to announce now that we are not prepared to argue the case, and that whatever predictions may be made by the Counsel for the Government are not in evidence in the case, and simply want to put ourselves on record as protesting against the undue lengthening of this record, and to announce to Counsel upon the other side that we expect to avail ourselves of every legitimate argument that the record may furnish us with, but that we do not expect that the repetition of the testimony of the witness will in any way strengthen what he has heretofore said. It being conceded that this examination is being carried on from from day to day at considerable expense to all of the parties to the litigation, we want to be on record as protesting against the undue lengthening of the record and the unreasonable insertion not only of remarks of Counsel, but of the testimony of witnesses upon the witness-stand

(Testimony of Chauncey L. Griswold.)

concerning things which are mere repetition of what has heretofore been testified to.

Q. Now, then, yielding to my learned brothers, Mr. Griswold, on this point, I desire to ask you this question: would the answer which you have previously given, be the same in each and every case wherein Mr. Cobban testifies that, when you agreed with these people that you would pay them one hundred dollars and their expenses upon their conveying to Mr. Cobban or to whom he might elect, would your answer be the same, that, where he says if you did make such an agreement as that, it was not in accordance with his instructions?

Mr. WALSH.—We object to that as leading.

Mr. BICKFORD.—Not only that, but for the further reason that the witness, having had an opportunity of correcting his testimony and reading the same over deliberately, and having done so, and signed the same, the presumption of law would be that his answer now would be the same as before, and that the question of counsel is superfluous, and calling for a conclusion of the witness and not for a statement of facts, but for a repetition in general terms of that which he has heretofore stated with particularity.

Mr. WALSH.—We would remark that the Court will find on pages 75, 76 and 77 the same testimony concerning the Watson deeds that the witness has now given.

(Testimony of Chauncey L. Griswold.)

Q. What is your answer, Mr. Griswold?

A. Well, I think I should change the answers to some of the questions in some respects; that is, I don't think they would be just the same as they were in the first place.

Q. What change; what do you mean?

A. Well, I don't know until you put the questions. There are some assertions that Mr. Cobban has made that are in direct opposition to statements that I have made.

Q. Very well; it is impossible for me to accommodate my brethren. Now, on page 5337, referring to this Watson matter, Mr. Cobban says: "In the first place it was absolutely contrary to any instructions from me; it was contrary to the instructions which I had given to Mr. Griswold, that he should make no bargains for the purchase of any of those claims beforehand." State what you have to say in regard to that testimony of Mr. Cobban.

Mr. WALSH.—Objected to on the ground that it is leading, and also because it is not rebuttal, having been testified to on direct examination.

A. Mr. Cobban never gave me any instructions of the kind, neither by word of mouth nor letter.

Q. What you did was in reference to the instructions that you got from Mr. Cobban?

A. Instructions contained in the contract, that Mr.

(Testimony of Chauncey L. Griswold.)

Cobban was desirous of obtaining timber in the Blackfoot valley.

Q. On page 5341, Mr. Cobban testifies: "Mr. Griswold had no authority, except in a very few cases, to make any offer for the purchase of claims, and then only by express instructions from me." I would call your attention to the fact as to whether you did receive such instructions from Mr. Cobban as he testifies?

Mr. WALSH.—That is objected to as leading, and also as not rebuttal, having been testified to on the examination in chief.

A. I have no recollection of any such instructions; the best of my belief is that there was no such instructions given.

Q. On page 5352 Mr. Cobban testifies: "Q. Now, if, as a matter of fact, Mr. Reeve, at the time of this conversation that you had with him, had already made his location, why was it that you were to charge him one hundred dollars? A. For the very reason that he was to pay Mr. Griswold for the work of helping to find the location, so he told me, and Mr. Griswold was, in a way, working for me. I expected to pay Mr. Griswold for each of the locations on which I made a loan of this kind five cents per thousand for any claim that that he showed like those in the Reeve case. That was what the charge of one hundred dollars to these people was for, for that five cents per thousand and for the other expenses connected with those claims."

(Testimony of Chauncey L. Griswold.)

What have you to say, Mr. Griswold, as to whether or not you were paid any money by Mr. Reeve or anybody in his behalf for locating him?

A. I was not paid one cent by Mr. Reeve or anybody in his behalf.

Q. When did you first hear that any such claim as that was being made?

A. When Mr. Reeve was on the witness stand in this room before the Examiner; that was the first that I had heard of it.

Q. What have you to say about Mr. Cobban's testimoney: "I expected to pay Mr. Griswold for each of the locations on which I made a loan of this kind," as to whether or not at any time there was anything said to you by Mr. Cobban on that subject?

Mr. WALSH.—Objected to for the reason that it is leading and also because it is not rebuttal.

A. There was not. I expected to get my five cents a thousand, because the claims were located or selected by Mr. Jemison, who was in my employ at that time.

Q. And for what purpose, if you know?

A. Why—

Mr. WALSH.—We object to that as not calling for any fact from the witness, but merely his conclusion drawn from the facts.

A. I hardly understand the question, Mr. Maynard.

Q. I will withdraw the question. On page 5436, calling your attention to the Stewart entry, Mr. Gris-

(Testimony of Chauncey L. Griswold.)

wold, after Mr. Cobban had testified in regard to that matter he was asked: "Q. Well, didn't you at that time and place in a conversation that you had with Mr. Stewart enter into an agreement with him that he should enter that particular piece of land, and that you would pay his expenses and pay for the land, and he retain it, after he had made his final entry upon it, and you take off the timber? A. No, sir, I did not." Do you recall the facts and circumstances referred to by the testimony of Mr. Cobban?

Mr. BICKFORD.—Objected to as not proper rebuttal, the witness having testified in full concerning the Stewart entry when upon the witness stand in chief, and for the further reason that the question is leading.

A. I do.

Q. What have you to say as to whether or not at the time and place just referred to any agreement was made or anything said on that subject?

Mr. BICKFORD.—Objected to because it is not rebuttal, and also because the question is leading.

A. There certainly was an agreement between Mr. Cobban and Mr. Stewart in my presence.

Q. And in substance, what was it?

Mr. WALSH.—We object to that because it is not rebuttal, the same question having been asked of the witness upon his examination in chief, and he having testified to it and having told in detail the conversation that was had and the agreement that was had

(Testimony of Chauncey L. Griswold.)

between Mr. Cobban and Mr. Stewart, and we will refer the Court and counsel to the page of the record on which the same is found.

Mr. MAYNARD.—If you have got it you can give it.

Mr. WALSH.—We have not only got it, but we contradicted it point blank by three witnesses.

Q. Well, what was the agreement, Mr. Griswold?

Mr. WALSH.—Wait a moment now, if you please.

Q. Go on and answer.

Mr. WALSH.—No, excuse me.

Q. Go on and answer.

The EXAMINER.—He has a right to put in his objections.

Mr. MAYNARD.—Certainly has a right to put in his objections.

The EXAMINER.—Well, let him put it in.

Mr. MAYNARD.—He can put it in when he finds it.

Mr. WALSH.—We would rather have it right in here. We desire to have it appear clearly that time is being consumed in repeating testimony and that the record is being unreasonably and improperly lengthened at the expense of the defendant, without any purpose being subserved at all except to increase the expense of this expensive lawsuit to both parties.

Mr. MAYNARD.—Now, if your Honor please, you

(Testimony of Chauncey L. Griswold.)

can see that this time is valuable to me, and I can't wait here for these matters.

Mr. WALSH.—Then you must not ask these questions.

The EXAMINER.—I will see that you don't lose any time; I can very easily hold a session longer so that the United States will not lose anything.

Mr. MAYNARD.—There is no reason why he cannot—

Mr. WALSH.—Counsel knows perfectly well that the testimony is here; he has no reason to put it in, except that he thinks it will do him some good to repeat it.

Mr. MAYNARD.—He can put it in when he finds it.

Mr. WALSH.—I have a right to follow your record, you know. I want it in the record right here.

Mr. MAYNARD.—The idea that I have got to stop here while he goes through five or six thousand pages of testimony is absurd, and I only want the single answer to the question, that is all, and then we can pass on.

Mr. WALSH.—There is no excuse for asking that question at all.

Mr. BICKFORD.—The amount of testimony that counsel is called upon to go through in order to discover this testimony could not be more than two hun-

(Testimony of Chauncey L. Griswold.)

dred pages at the outside, it being part of Mr. Griswold's testimony.

The EXAMINER.—Counsel can have time to find what he wishes to, if he can do so.

(After waiting a few minutes.)

The EXAMINER.—Well, I think I will let Mr. Maynard go on now.

A. The agreement was that Mr. Cobban should furnish the money to defray the expense of acquiring title to the land, that Mr. Cobban should have the timber, and that Mr. Stewart should retain the land for pasture purposes.

Q. Mr. Griswold, if you know of any case named in the bill of complaint on the part of any entryman or entrywoman, where the land was located and entered by them under any other agreement or arrangement than the one that you have testified to, namely, that they were to locate the land, file upon it and do all that was necessary to be done, with the agreement existing between them that they were to transfer the land to Mr. Cobban for and in consideration of the sum of one hundred dollars above their expenses, as you have stated, I wish you would point it out.

Mr. BICKFORD.—Objected to on the ground that it is not rebuttal.

Q. If you know of any other arrangement on the part of any one of these entrymen or entrywomen, please name it.

(Testimony of Chauncey L. Griswold.)

Mr. BICKFORD.—The same objection, that it is not rebuttal.

A. I know of none, with the possible exceptions of one or two who received more than one hundred dollars.

Q. Well, I am not now talking about the exact sum of one hundred dollars, but for and in consideration of receiving a certain sum of money from Mr. Cobban?

Mr. BICKFORD.—The same objection, that it is not rebuttal.

Mr. WALSH.—Also it is immaterial and irrelevant that this witness does not know anything to the contrary. A. I know of none, no, sir.

Q. Now, calling your attention, Mr. Griswold, to the civil suit that you brought against Mr. Cobban, was the contract that was sued upon by you and referred to in Mr. Cobban's testimony, the same contract that is in evidence in this case?

Mr. BICKFORD.—We object to that as not proper rebuttal.

A. Yes, sir, the contract that is in evidence in this case is a copy of the contract that I sued Mr. Cobban upon.

Q. The original of which is now in the hands of the Examiner?

A. To the best of my knowledge and belief, yes, sir; I didn't see the original; I suppose it is in the hands of the Examiner.

(Testimony of Chauncey L. Griswold.)

Q. What they claim is the contract?

A. Yes, sir.

Q. Were you present during that suit?

A. I was.

Q. Please state if, to your knowledge, reference was made by anyone in the interest of Mr. Cobban that the lands entered under the Stone and Timber Act was on any other or different basis than land purchased under other acts?

Mr. BICKFORD.—Objected to as irrelevant and immaterial and also because it is not rebuttal.

A. Well, I would say that there was. There was a few claims that was bought by Mr. Cobban that were already patented prior to the 22d day of May, 1899, and there was some lands, containing, to the best of my recollection, about forty million feet, that were secured by scrip.

Q. You didn't understand my question. What I meant was, was there any claim made that the land purchased under the Stone and Timber Act was secured for the purpose of making loans upon them or anything of that kind?

A. No, sir, there was not.

Mr. WALSH.—We object to that question as leading, also as not rebuttal, and as immaterial and irrelevant.

Q. And when do you say that you first heard of that idea, that that claim would be made?

A. Well, since the inception of this suit; I believe

(Testimony of Chauncey L. Griswold.)

that Mr. Cobban was the first witness that I heard mention it.

Q. In his testimony?

Mr. WALSH.—Objected to as leading, and also as not rebuttal.

A. Yes, sir, with that exception, I would say, as I have already stated, that on or about the last of August or the first of September of that year—

Q. I know; you have referred to that, Mr. Griswold; I am not talking about that. Now, then, did you testify in that case? A. I surely did.

Q. Did you furnish a bill of particulars of your claim?

A. I did, sir.

Mr. WALSH.—Objected to as not rebuttal.

Q. I wish you would take from the files of that case that statement and point out the different items of the same wherein the claim was made by you at the time of that suit that the services rendered by you were in pursuance of the contract and the parol agreement that you were to locate these people, as you have testified.

Mr. BICKFORD.—Objected to as not proper rebuttal testimony.

Mr. WALSH.—What are you trying to do? I presume there is some limit to this.

Mr. MAYNARD.—See how the galled—see how they wince under it.

Mr. WALSH.—This witness has already testified in

(Testimony of Chauncey L. Griswold.)

what is claimed to be rebuttal herein that this action was founded upon a claim made by him under the contract referred to in the question, and that the whole action was founded upon that contract, and that each and every claim in the suit was founded upon the contract. Therefore, to require the witness to take up the bill of particulars and answer as to which one of the claims was founded upon the contract referred to, is to ask him in detail what he has already testified to completely, and simply to consume time with absolute lack of necessity and to serve no purpose whatever except to unduly lengthen this record. The testimony has absolutely nothing on earth to do with any testimony that was submitted on the part of the defendant. It is testimony in chief, if it is testimony at all, and if it is testimony at all, it is already in the record in the testimony of the witness that the action was founded upon the contract and that the claims were made under it.

Mr. MAYNARD.—It is so simple, and I know that my astute friend knows that it is, that it is unpardonable on my part to undertake to answer it. But I desire, as there is some show of vehemence in the record, to point out the reason why this testimony is called for. In the contract, which is of evidence in this case, there was an agreement made that Mr. Griswold should help Mr. Cobban in the purchase of timber lands. There were three kinds of timber lands that were to be purchased, that is, those that could be taken up under what is known as the Scrip Lieu Act, those that had already

(Testimony of Chauncey L. Griswold.)

been patented, and third, those that were to be acquired under the Stone and Timber Act to which title had not as yet been obtained. Now, Mr. Cobban goes on the stand and swears that he did not undertake, and did not intend, and hadn't it in mind at the time of making the contract to buy the lands under the Stone and Timber Act, but to aid other people to buy them, and he was to loan them money and get one hundred dollars from them for the service. Now, to rebut that, and to show that as a matter of fact in the civil suit the claim was made all the way through for service that was rendered under the contract in the purchase of lands secured under the Stone and Timber Act, and that it was never challenged nor never thought of until this case was brought up that such an idea as the loan was ever to be dreamed of by anybody. I now seek to show by the detailed statement of the itemized account of Mr. Griswold just where he claimed service and where it was recognized and paid for or challenged, not on the ground that it was a loan, but because the service had not been rendered.

Q. Now, go on, Mr. Griswold.

A. Do you wish me to read the whole of it?

Q. No, sir, just a few of the items that you can point out under the question I put to you.

Mr. WALSH.—If this thing goes on, it will lead people to believe that you are dragging this case out for the purpose of swelling fees.

Mr. MAYNARD.—I don't wonder that you don't like this testimony.

(Testimony of Chauncey L. Griswold.)

Mr. WALSH.—The testimony is already in the record, whether we like it or not.

Mr. MAYNARD.—I want Mr. Griswold to point out the specific items that are detailed there; I don't know which ones they are.

Mr. WALSH.—The bill of complaint tells you which ones they are and who the parties are, and the itemized statement tells about the expenses paid in connection with each one of the entries. Now, it is not John Jones; it is Clara Belle Mickels, and it is Edward Dodd, and it is Harrison Dodd in the itemized statement.

The EXAMINER.—Let the record show that the witness is refreshing his memory by using the itemized bill of particulars furnished in that case.

A. The first that appears is the location, as per contract, of one hundred and thirty-eight million six hundred and thirty-five thousand feet of timber in Deer Lodge and Missoula counties, at five cents per thousand feet, amounting to $6931.75.

On October 16th, balance due on Combie & Seely claims, $44.12.

July 31st, 1899, To Gilles and Cloutier expenses in filing, $51.60.

August 1st, Gillies and Cloutier, final proof, $37.85.

Amount paid Watson for Catlin, $5.

Amount paid Bourquin, attorney's fees, $20.00.

Mr. WALSH.—The witness is doing nothing but reading the itemized statement from top to bottom.

(Testimony of Chauncey L. Griswold.)

Mr. MAYNARD.—I suppose he knows what I called his attention to.

Mr. WALSH.—The hundred and thirty-eight million feet, you called his attention to the scrip lands and deeded lands and everything.

Mr. MAYNARD.—I did not.

Mr. WALSH.—That is what he is reading to you.

Q. Are you, Mr. Griswold?

A. I am reading the items that was involved in the contract and under the contract under which I was working for Mr. Cobban during 1899.

Mr. WALSH.—That was the question asked.

Q. I called your attention to those items in the bill of particulars which had direct reference to the services rendered by you under the Stone and Timber Act.

A. Oh, I have got that right over here; I haven't got them all, but I have a portion of them.

Q. Well, give such as you have got in the account.

Mr. WALSH.—The witness can say that they are all referred to on page so and so of the itemized statement.

Mr. MAYNARD.—Let him read it.

Mr. WALSH.—We object to his reading the bill of particulars. The matter is already in the case, and to read from the bill of particulars is merely to duplicate the evidence, a matter that can subserve no purpose whatever.

A. Shall I read the number of feet in each section?

Q. Yes.

(Testimony of Chauncey L. Griswold.)

A. Oscar Muckenhiern.... .... 600,000 feet
O. Muchmore..... 800,000
E. D. Doney..... ....1, 025,000
Martha Doney..... 400,000
E. W. Hoyt..... 2,690,000
L. D. Jakways..... 1,975,000
E. J. Faust..... 1,660,000
G. W. Muchmore..... 885,000
C. E. Johnson..... 1,300,000
W. M. Zander..... 700,000
Elizabeth Muchmore..... 415,000
Albert Muchmore..... 600,000
Frank B. Chattin..... 900,000
Thomas Pelkey..... 525,000
John Gilles..... 875,000
C. Cloutier..... 825,000
John White..... 750,000
H. C. Chattin..... 625,000
Harriet Bryan..... 700,000
Stephen Tepper..... 700,000
Nelson Opsata..... 565,000
Stewart..... 675,000

Here is Dunigan, 1,100,000; that was taken by scrip.

Q. Well, I don't want that.

A. E. D. Doney..... 935,000
J. B. Catlin..... 1,050,000
L. Barrett..... 1,100,000
Belle Bryan..... 650,000
E. Lehman..... 500,000

(Testimony of Chauncey L. Griswold.)

L. T. Bryan..... 625,000
Hiram Dodd..... 760,000
Matilda Dodd..... 745,000
Harrison Dodd..... 825,000
Lizzie Dodd..... 610,000
Edward Dodd..... 965,000
Cora Dodd.....1,200,000
Katie Watson..... 620,000
T. H. McConnell..... 960,000
C. B. Sperry.....1,233,000
Harriet Watson..... 590,000
D. E. Watson..... 885,000
G. P. Jemison..... 840,000
Albert Jemison..... 700,000
J. C. Gilman..... 965,000
Emma Dildine.....1,235,000
George Dildine.....1,020,000
J. F. Jemison..... 900,000
Matilda Eddy..... 820,000
Sarah Yarger..... 815,000
Thomas Roll..... 720,000
A. J. Jemison..... 750,000
James Wheaton..... 775,000
Mary Eddy..... 825,000
Herbert Eddy.....1,060,000
M. D. Watson..... 830,000
R. Pelkey..... 445,000
Evaline Jemison.....1,220,000
James Mize..... 870,000

(Testimony of Chauncey L. Griswold.)

Laura Roll	860,000
C. H. Jemison	900,000
Calvin Yarger	820,000
Zora Jemison	690,000
Jennie Mize	645,000
L. A. Wells	1,275,000
Lizzie Wells	1,115,000
J. G. Hendrix	850,000
M. E. Wright	1,025,000
L. T. Catlin	950,000
May Hawthorne	1,300,000
H. C. Dorman	625,000

Q. Now, just what does that list represent, Mr. Griswold? A. In feet, do you mean?

Q. No, what does it represent?

A. It represents the timber and stone lands that were taken up on the Blackfoot River in the year 1899.

Q. How?

Mr. BICKFORD.—We object to that question as not proper rebuttal.

A. Why, most of them were taken up or selected by myself and men that was in my employ; there was a few of them up in the upper portion of the country, the Doneys, the Hoyts, the Muchmores and Stewart and Opsata that were located by Jakways and Faust, that is, I am so informed.

Mr. BICKFORD.—We move to strike out the answer of the witness because it is apparently simple hearsay

(Testimony of Chauncey L. Griswold.)

that he is testifying to, or else that he is manufacturing it.

Q. Under and in pursuance of what were those taken up?

Mr. BICKFORD.—We object to that as not rebuttal, being a mere repetition of the testimony given by the witness heretofore, he having gone into the details and particulars of all of the transactions concerning which he is now interrogated.

A. Under and in pursuance of the contract dated May 22d, 1899, between myself and Mr. Cobban.

Q. If any of those that you had to do with were taken up under any other agreement or arrangement than the one that you have frequently testified to, I wish you would not point it out, about receiving money from Cobban after the final proof.

Mr. BICKFORD.—The same objection as to the last question, being mere repetition of testimony heretofore given by the witness.

A. As far as the people that I was directly interested with personally there was no other arrangement or agreement, and my instructions was to the men in my employ that they should make no other agreement or arrangement.

Q. Have you any knowledge as to any one of the names that you have now read, that the land was entered or sold to Mr. Cobban under any other arrangement than that which you now refer to; if you have, state it.

(Testimony of Chauncey L. Griswold.)

Mr. BICKFORD.—Objected to because it is leading, also irrelevant and immaterial, also not proper rebuttal.

A. I have no knowledge of any different arrangements being made.

Q. Now, Mr. Griswold, during that suit, when you furnished that bill of particulars under that claim, you may state as to whether or not at any time there was any question raised other than the question as to the value of the services that you had rendered?

Mr. BICKFORD.—Objected to for the reason that it is a mere repetition of the question that has been already asked by counsel either four or five times within the last twenty-four hours, because it is not rebuttal testimony, and because it is irrelevant and immaterial and also leading.

A. There was nothing raised or said in regard to the just claim that I have made on Mr. Cobban for this amount, but he maintained that he had paid it by prior settlement.

Q. In other words, the controversy hinged upon the question as to whether you had been paid, or something of that kind? A. Yes, sir.

Q. Not in regard to the question as to how the land had been taken up?

Mr. BICKFORD.—Objected to because it is leading, because it is not proper rebuttal, because it is irrelevant and immaterial, and further because it calls for a conclusion of the witness and not for a statement of facts.

(Testimony of Chauncey L. Griswold.)

A. No, sir, no question of that kind arose.

Q. Have you in your possession, Mr. Griswold, a statement that happens now to be in your possession and that you did not deliver over, that you received from Mr. Cobban, in which he recognizes the services that you had rendered in regard to certain of these entrymen? A. I have.

Q. Where is that statement?

Mr. WALSH.—Objected to because it is immaterial, irrelevant and incompetent, and not rebuttal testimony, and as assuming that there is some recognition on the part of Mr. Cobban of something in the statement.

A. Is this the statement you referred to? (Introducing paper.)

Q. Yes. When did you receive this statement from Mr. Cobban?

Mr. BICKFORD.—Objected to as not proper rebuttal testimony, and as irrelevant and immaterial.

A. My recollection is that I received that in the latter part of the year 1899, but I would not be positive as to the date.

Q. I see that there is a list of names appearing there on the head of the page, and figures opposite?

A. Yes, sir.

Q. Please state what those names and figures represent?

Mr. BICKFORD.—We object to that, because the

(Testimony of Chauncey L. Griswold.)

paper itself is the best evidence of the fact sought to be proved, and also because it is not proper rebuttal testimony, and because it is irrelevant and immaterial.

A. It says: "Deeded claims:

M. R. Stairs	1,210,000
Irene Hendrix	635,000
Mark Starkey	835,000
Albert Ehle	680,000
John B. Reeve	795,000
Eliza A. Reeve	845,000
John Murtaugh	695,000
Vital Cyr	1,070,000
Levi B. Cyr	400,000
Ambrose Martin	885,000
Joseph Frizzel	840,000
Jas. B. Seely	560,000
Herman Spieker	1,225,000
Total	11,360,000

Shall I go on with the scrip land?

Q. No, sir. What does that list that you just read represent as far as the characterization of the land is concerned?

Mr. BICKFORD.—Before you answer the question, we desire to interpose a motion at this point to strike out the statement of the witness as read from a paper in his possession now, because the paper itself is the best evidence of the facts sought to be proved; because

(Testimony of Chauncey L. Griswold.)

the paper itself does not contain the statements as read by the witness, and because the paper does not purport to be any statement of any transaction between any persons, and because it is irrelevant and immaterial, and because it is not proper rebuttal testimony.

Mr. MAYNARD.—I propose to offer the paper in evidence in the case—

Mr. WALSH.—Then, we will have the evidence in twice.

Mr. MAYNARD.—as directly bearing upon the case, and given to him by Mr. Cobban at the time.

Mr. BICKFORD.—When it is offered we might then make an objection to it.

Q. Now, Mr. Griswold, of the first list of names that you have now read, under what act of Congress were those lands located or purchased?

A. With the one exception of Joseph Frizzel, they were located under the Timber and Stone Act.

Q. By whom were they purchased?

A. By Mr. Cobban.

Q. State as to whether or not you were paid by Mr. Cobban for the services rendered under the contract in and about those lands?

Mr. WALSH.—Objected to because it is leading, because it is irrelevant and immaterial and because it is not proper rebuttal.

(Testimony of Chauncey L. Griswold.)

A. I was paid, with the exceptions of the Seely claim, just according to the terms and conditions of my contract with Mr. Cobban.

Q. And what was that?

A. Five cents a thousand—

Mr. BICKFORD.—We object to that because the witness has at least twenty times stated what the conditions of his contract were, and because it is a mere repetition of the testimony heretofore given by the witness concerning this same matter.

Mr. WALSH.—The contract appears to be in writing, and the writing is the best evidence.

Mr. MAYNARD.—Your objections here take up ten times as much in the record as the questions and answers would.

Mr. BICKFORD.—And you would seek to force us into a position where we would appear to waive our objections to these things?

A. Under the terms and conditions of my contract I was to receive five cents a thousand for each thousand feet of timber so located.

Q. Was that your rate without reference to the question of whether they were afterwards purchased by Mr. Cobban?

Mr. BICKFORD.—Objected to because it is leading, and because the contract is the best evidence.

A. It was where parties were located by myself in

(Testimony of Chauncey L. Griswold.)

that part of the country, I was to receive five cents a thousand as soon as the final receipt issued, but where parties were sent by Mr. Cobban, as specified in the contract, I was to receive five cents a thousand as soon as an estimate could be made, not exceeding thirty days' time.

Q. With reference to the Seely claim, how much were you paid, if anything?

Mr. BICKFORD.—Objected to as immaterial and irrelevant and also leading.

A. I was paid, prior to the civil suit that I brought against Mr. Cobban, two and a half cents per thousand, or allowed that, given credit for that much.

Mr. MAYNARD.—We offer this paper in evidence; it is a paper, I desire to say, that I care to use only so much of it as refers to the lands that were located under the Stone and Timber Act, and the Scrip Act I don't care anything about.

Mr. BICKFORD.—We object to the introduction of the paper in evidence for the reason that it does not purport to be any verified statement of any kind of anything, and we object further to the introduction of the paper in evidence unless the whole paper is placed in evidence.

Mr. MAYNARD.—I am willing to have it go in as a whole.

The EXAMINER.—The paper will be marked Complainant's Exhibit No. 347.

(Testimony of Chauncey L. Griswold.)

Q. When that settlement or statement of account was handed to you by Mr. Cobban, you may state as to whether or not anything was said by him at that time, that those lands were not purchased in pursuance of the agreement, but that they were taken up for the purpose of making one hundred dollars by reason of loaning money on them?

Mr. BICKFORD.—Objected to because it is leading, because it is not proper rebuttal and because it is hearsay.

Q. If any such subject matter or anything was referred to by him, please state what it was.

Mr. BICKFORD.—Objected to as leading, as not proper rebuttal and as hearsay.

A. There never was anything of the kind mentioned

Q. Did you receive your pay for those lands from Mr. Cobban?

Mr. BICKFORD.—Objected to as irrelevant and immaterial and as not proper rebuttal.

A. I did, yes, sir.

Q. Now, Mr. Griswold, passing that subject, I desire to call your attention to Mr. McLeod's testimony. On page 3649 Mr. McLeod says: "Well, I had no statements to make. Mr. Griswold's reputation in our community is bad. Q. His reputation for what? A. For truthfulness; in other words, he is not considered a man that tells the truth. That is his general reputation in our community. That is well known.

(Testimony of Chauncey L. Griswold.)

Q. That is in the city of Missoula? A. Yes, sir. Q. Now, I want you to tell me, Mr. McLeod; you make that sworn statement here; I want you to tell me what you base it on? A. I base it on my business relations with him." Now, I want you to tell me, Mr. Griswold, if you know Mr. McLeod?

A. I do know him well, yes, sir.

Q. How long have you known him?

A. Since 1894 or 1895.

Q. Have you had business relations with him?

A. I have, continuously since that time.

Q. You may state as to whether or not he has at times been on your bond?

A. He has, to the amount of sixteen thousand dollars.

Mr. WALSH.—We object to that; the bond is the best evidence.

The WITNESS.—I believe that that was the amount.

Q. Have you purchased goods from his company?

A. I have.

Q. Do you owe them anything yourself?

A. Personally, I do not. My wife, I believe, owes them about three hundred dollars, a little better than three hundred dollars at this time.

Q. Do you personally owe them anything?

A. Well, not to the best of my recollection.

Q. Have you in your possession a receipt from Mr. McLeod or from the company?

(Testimony of Chauncey L. Griswold.)

A. Well, not directly from Mr. McLeod; I have from the company, yes, sir.

Q. Of which he is manager?

A. Yes, sir. Here it is. Shall I read it?

Mr. MAYNARD.—I read the receipt handed me by the witness as follows: "Missoula Mercantile Company, Missoula, Montana, November 20th, 1899."

Mr. WALSH.—We object to this as immaterial and irrelevant.

Mr. MAYNARD.—"No. 39,922. Received from C. L. Griswold, Esq., $127, in full of book account. Missoula Mercantile Company, by Van Wart, Treasurer." I offer this in evidence.

Q. Did Mr. McLeod ever lose anything by his obligation on your sixteen thousand dollar bond, Mr. Griswold? A. Not a cent.

Q. Have you any knowledge of his ever having lost anything by reason of his having entered upon any bond or obligation for you or any goods that you may have bought from him?

Mr. WALSH.—Objected to as not rebuttal and as immaterial and irrelevant.

A. No, sir, he has never lost anything to my knowledge. He has never claimed to me that he has lost anything. He has always showed me every courtesy that one man could show to another in a business way.

(Testimony of Chauncey L. Griswold.)

Q. When did he enter upon this sixteen thousand dollar bond, Mr. Griswold?

A. My recollection is that it was in the fall of 1895, but I might err in the year.

Q. Was Mr. McLeod at one time the Manager of the Big Blackfoot Milling Company, or connected with it?

A. He never was Manager, but I am under the impression that he was connected with them, if not in a business way, in a very friendly and social way. If you could understand, Andrew B. Hammond and Henry Hammond was the principal owner in the stock of the Blackfoot Milling Company, and also A. B. Hammond, President of this Missoula Mercantile Company, of which Mr. McLeod is now General Manager; therefore, in their connections, I would not hesitate to say that Mr. McLeod was, in a way, connected with the Blackfoot Milling Company.

Mr. WALSH.—At this point we desire to have it noted upon the record that the testimony of this witness concerning the conversation with Mr. Stewart, that he was asked this morning to detail, and the agreement he alleges was entered into with Mr. Stewart will be found at page 3312 of the record.

Q. If you know, Mr. Griswold, of any reason or motive which would lead Mr. McLeod to give the testimony to which I have called your attention, I wish you would state it.

(Testimony of Chauncey L. Griswold.)

Mr. WALSH.—Objected to as immaterial and irrelevant and not proper rebuttal.

A. Well, the only reason that I can assign for his testifying the way he has done, is, first, he is a bondsman for Mr. Cobban, so I understand, in sum of ten thousand dollars; second, he is connected with the Blackfoot Milling Company in a way, and there might be disagreeable inquiries made in regard to their acquiring timber land on the Blackfoot, as well as cutting timber under a permit system, as they have done in the last eight or nine years.

Mr. WALSH.—We move to strike out the testimony of the witness as to Mr. McLeod being surety on any bond for Mr. Cobban, for the reason that the same appears to be hearsay, and further, because the bond would be the best evidence of the fact.

Q. I now call your attention to the testimony of Mr. Kendall on page 3839. He is asked the question: "Do you know his reputation (Mr. Griswold's) in the community in which he lives for truth, honesty and integrity? A. I would say that it was not very good; that is, I have heard of it in a general way of speaking. I I don't consider it very good myself. Q. You have had no deals with him or any conversation with him concerning Mr. Cobban's transactions, have you? A. No, sir, I have not." Do you know Mr. Kendall?

A. I do, yes, sir.

Q. What business deals of any kind did you ever have with him?

(Testimony of Chauncey L. Griswold.)

A. I never had any business transaction with Mr. Kendall, with the possible exception that in the year 1895, is my recollection, I was on the Bitterroot river looking over some of the cuttings there that had been made by Mr. Kendall, and he was very anxious to find out my business there, what my purpose was and all about that, and came to our camp several times to make these inquiries. And then and there I may have bought some supplies from Mr. Kendall; I couldn't say whether I did or not, but if I did I paid for them and that settled it.

Q. Dd you have a conversation with him in regard to any matter that you desired to speak about in reply to his testimony, which may have prompted that testimony.

A. Well, I have simply to say this: Mr. Kendall came to me in Missoula and tendered me one thousand dollars for and in consideration of my withholding the report that I should have made of my observations on the Bitterroot river, giving him an opportunity to cut and remove certain timbers where he was working; that, should I go on and make the report, it might cause an investigation to be made and stop him from doing this work, thereby incurring loss to him. At the same time Mr. Kendall assured me upon his word as a man and a gentleman that this money was not the money of Marcus Daly or of the Anaconda Copper Mining Company, but his own individual money; that it was something that the Anaconda Copper Mining Company or Marcus Daly or the Bitterroot Development Company knew nothing about.

(Testimony of Chauncey L. Griswold.)

Mr. WALSH.—I move to strike this out as not rebuttal.

Q. What was the work, Mr. Griswold, if you know, that he was doing, as to whether it was against the laws of the United States or not?

Mr. WALSH.—We object to that as leading, and as asking a conclusion from the witness, requiring him to testify as to his views of the laws of the United States.

Q. Well, I am calling for what Mr. Kendall said to you on that subject.

A. I called Mr. Kendall's attention to one permit that they claimed to have on a section of land that was situated away up high on a mountain, entirely impracticable, when they were cutting in the valley, and I asked him if he didn't think he had a pretty large permit, and explained my reason for asking it, and he said he didn't care anything about the permit, that all he wanted was an excuse or right to get in there.

Mr. BICKFORD.—We move to strike out any conversation between this witness and Mr. Kendall concerning permits, because it is irrelevant and immaterial and not proper rebuttal testimony.

The WITNESS.—At that time there was people there, when I was at his camp, who had filed their intentions on unsurveyed Government land to make an entry of the same land as soon as the land was surveyed, and Mr. Kendall in a great many cases—in all cases I think—paid

(Testimony of Chauncey L. Griswold.)

these parties money to abandon their claims and give him a right to go on and cut.

Mr. BICKFORD.—We repeat the motion to strike, because it is irrelevant and immaterial and not proper rebuttal testimony.

Q. Are you able to state, Mr. Griswold, as to whether the work Mr. Kendall was doing there and which he referred to in conversation, was illegal or not?

Mr. BICKFORD.—That is objected to because it is calling for a conclusion of the witness, because it is leading and not proper rebuttal.

Mr. WALSH.—It is also asking for the opinion of the witness as to the law of the case.

A. It most surely was, as far as I understood it.

Q. Do you know how long he had been engaged in that illegal work?

Mr. BICKFORD.—Objected to because it is not rebuttal.

A. Well, from my observation, I should say he had been engaged in it for about five years prior to that time, judging from the land that I went over.

Q. Now, here is a man by the name of D. V. Bean. Do you know him? A. I do, yes, sir.

Q. On page 3713, my brother Walsh asked Mr. Bean the question: "Q. Mr. Bean, in the course of some testimony which Mr. Griswold gave in this hearing, he was asked as follows: 'I will ask you whether or not, at about

(Testimony of Chauncey L. Griswold.)

the time you commenced this suit in Missoula, you did not say in effect to D. V. Bean on the street in Missoula: "I will send that son of a bitch, Cobban, to the penitentiary if he does not pay me the thirty-five hundred dollars that he owes me," or words to that effect? A. No, sir, he didn't say that; that was not what he said to me; but if you wish me to state what he said, I will do so. Q. I wish you would do so, please. A. He met me on the street there and wanted to show me a contract that he had with Mr. Cobban, and I says: 'Chauncey,' I says, 'I don't want anything to do with you.' But he insisted on it, and insisted on showing me the contract, and he says: 'I will make that son of a bitch pay the thirty-five hundred dollars he owes me there, or I will—' I don't know exactly what the amount was, but he says: 'I will make him pay me thirty-five hundred dollars more on it, and if he doesn't, I will send him over the road.' That is what he said exactly. Q. The witness was also asked whether on or about the 27th of April, 1901, he did not say to you: 'I am going to make that son of a bitch,' referring to Cobban, 'pay me thirty-five hundred dollars more, according to the contract,' and referring to it, 'and I will get Draffen to send it to Zevely, who is a friend of the Secretary of the Interior, and I will prove all these entries fraudulent and have them all canceled.' A. Yes, sir, that is just about the words he used, just about the words. He says: 'Zevely is a friend of Draffen, and he can get him out here, and he will raise hell with that son of a bitch, as well as all you other fellows, too.'"

(Testimony of Chauncey L. Griswold.)

Do you recollect having had such a conversation with Mr. Bean?

A. Never on earth.

Q. Was there anything, any basis for it whatever?

A. Not the first shadow of a basis for anything of the kind.

Q. And Mr. Bean was further asked, on page 3712 of the record: "Q. Do you know what his general reputation is for truth and honesty and integrity in the vicinity in which he lives. A. He has none at all; he has no reputation for truth and veracity or anything, none on earth. I know it, because I associated with him enough to know that, and every man that has associated with him knows the same thing." Now, Mr. Griswold, have you associated with this man, Bean, in your lifetime?

A. I have yes, sir.

Q. If so, state what that association has been.

A. My recollection is it was in the early summer of 1895, Mr. Bean was staying here in Helena. He told me he had a proposition over on Priest river, in Idaho, which the Secretary of the Interior at that time I believe, Mr. Lamoreaux, was going to go in with him and acquire title to considerable timber in there for speculation—

Mr. WALSH.—We object to this because it is not rebuttal, and because it is immaterial and irrelevant.

The WITNESS.—But for some reason it didn't materialize, and Mr. Bean was around here without anything to do, and he went over and saw Mr. Daly, and Mr. Daly

(Testimony of Chauncey L. Griswold.)

for some reason sent him into the Flathead country to look up the amount of timber that was tributary to Flathead Lake. Mr. Bean came back here and came to me and wanted me to go with him which I, having nothing to do, done. I went with Mr. Bean and was on the Flathead river, or from here to the Flathead river and return, something like sixty days. I read over the entire testimony of Mr. Bean in regard to this matter and will say that he was either drunk or crazy, or bought by Mr. Cobban to say what he did say on the stand, because there was no basis for his making any such statement as he has made.

Mr. WALSH.—We move to strike out the statement of the witness because it is not rebuttal, and because it is immaterial and irrelevant.

Q. I will ask you, Mr. Griswold, do you know the general reputation of Mr. Bean in the neighborhood in which he lives for truth and sobriety and honesty?

Mr. WALSH.—We object to the question as far as it is based on sobriety, for the reason that it is immaterial and irrelevant.

Mr. MAYNARD.—I think that is so; I will omit the word sobriety in the answer. The fact that he is a confirmed drinker, I suppose, does not enter into the case.

Mr. WALSH.—We now except to this remark of counsel as a gratuitous insult to the witness that has no place in the record here, as counsel well knows, and as an abuse

(Testimony of Chauncey L. Griswold.)

of his privilege as counsel. We further object to his question being put to this witness on the ground that this witness is incompetent, by reason of his own confession of repeated perjuries, to testify to the character or reputation of any man.'

Q. You may answer the question, Mr. Griswold.

A. Why, as far as I am informed, it is not good. I know that he has told me wherein he has tried to purchase timber and tried to borrow money, and failed in each case.'

Mr. WALSH.—We move to strike out this testimony as not in response to any question.'

The WITNESS.—And he has told me—

Mr. WALSH.—One moment.

The EXAMINER.—The first sentence is an answer to the question.

Recess till 2 P. M.

C. L. GRISWOLD, recalled for complainant:

Direct Examination.

(By Mr. MAYNARD.)'

Q. Mr. Griswold, do you know Harrison Dodd, that United States Marshal Woolman has just referred to?

A. I do, yes, sir.'

Q. Do you remember the circumstance of his appearing before Mr. United States Inspector Zevely at Missoula? A. I do, yes, sir.'

(Testimony of Chauncey L. Griswold.)

Q. Do you know how he went to Missoula?

A. I do.

Q. State.

A. He went with me in a conveyance that I hired from the livery stable in Missoula for the purpose of bringing witnesses before Mr. Zevely, between Clearwater and Missoula.

Q. Where was he when he started to go to Missoula?

A. He was about eight miles above Bonner, on the Blackfoot river, at his home.

Q. Do I understand that you went with him from his home to Mr. Zevely's office in Missoula?

A. I did, yes, sir.

Q. You may state as to whether or not you heard Mr. Harrison Dodd's testimony. A. I did hear it.

Q. Before whom was it taken?

A. Before Special Inspector Mr. Zevely.

Q. State as to whether or not he was sworn.

A. He was.

Q. How was the testimony taken?

A. It was taken down in shorthand and afterwards written out in typewriting.

Q. What was done after the same was given by Mr. Harrison Dodd and written out by the stenographer; what was next done?

A. The same was submitted to Mr. Dodd for corrections, if he choose to make any, and afterwards acknowledged under oath to be his true and correct testimony.

(Testimony of Chauncey L. Griswold.)

Q. You may state as to whether or not you were present when the signature was affixed. A. I was.

Q. Who signed it? A. Harrison Dodd.

Q I show you this paper, and you may state as to what that paper is. Look at the signature and the whole of it.

A. I have looked at the whole of it, signature and all. This is the copy or is the direct testimony of Mr. Harrison Dodd, given before Mr. Zevely on this suit.

Q. What do you mean by the copy?

A. Why, it is the copy of the work taken down in shorthand.

Q. You mean the transcript? A. Yes, sir.

Q. Whose signature is that, if you know?

A. Harrison Dodd's. I have seen it many times and am well acquainted with it, and I am not at all backward in asserting that it is Harrison Dodd's signature.

Q. What have you to say about whether you heard the testimony given.

A. I did hear it, yes, sir.

Q. Have you read this transcript? A. I have.

Q. And the whole of it? A. Yes, sir.

Q. You may state, after having read the testimony and refreshed your recollection thereby, as to whether or not you have any independent recollection of the testimony that Mr. Dodd gave before Mr. Inspector Zevely at that time,

A. Well, I have a distinct recollection of a great many of the points in the testimony. I could not say I

(Testimony of Chauncey L. Griswold.)

recollected it all, but I recollect a great many portions of it.

Q. If there is anything in that original transcript that was so signed by Mr. Harrison Dodd, different from any knowledge that you have of your own, please state it.

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. There is not anything in that transcript.

Mr. MAYNARD.—Please mark that as an exhibit for identification.

The EXAMINER.—I have marked it Complainant's Exhibit No. 349.

Mr. MAYNARD.—What I want to do, if your Honor please, is this: this is the original affidavit of Mr. Dodd, which I have received from the Secretary of the Interior at Washington, and I am instructed by him, after having used it here, to return the same to the files in the Secretary of the Interior's office, so I desire to simply use it now and have it read into the record, and to have your Honor certify to the accuracy of the transcript taken by the stenographer.

The WITNESS.—There is one thing shown in that transcript wherein Mr. Dodd has testified, that might lead people in error, wherein he says that there was one claim located for me.

(Testimony of Chauncey L. Griswold.)

Mr. WALSH.— We object to this.

The EXAMINER.—If he wants to correct his testimony he has a right to.

Mr. WALSH.—One moment. He is not asked to tell at all how it ought to be; he has been asked to say if it is a correct transcript of the testimony.

Mr. MAYNARD.—That is broad enough.

The EXAMINER.—But questions ought to be put.

Q. You said there was something you desired to note in regard to the matter, and I ask you what it is.

Mr. WALSH.—We don't care to have the witness note any particular thing in which the testimony is not as it ought to be; if he can say that Mr. Dodd testified otherwise than is in the transcript, we have no objection to that. All he is called upon to testify now is whether Mr. Dodd testified that way or not; he is not called upon to make any explanations of Mr. Dodd's testimony. We object to the question. It is not a question: it is just simply calling for remarks from the witness. If there is anything that counsel desires he should testify about, he ought to put the question to him.

Mr. MAYNARD.—Mr. Griswold has notified me now that there is something that he has noted in this testimony of Mr. Dodd which he heard, that he desires to make some explanation about.

Mr. WALSH.—Well, we object.

(Testimony of Chauncey L. Griswold.)

Mr. MAYNARD.—I don't care what you do.

The EXAMINER.—He has a right to object.

Mr. WALSH.—We object to the witness giving any explanation of Mr. Dodd's testimony on the ground that the same is irrelevant and immaterial.

A. Mr. Dodd claims in there that there was one claim located or a selection made by myself, wherein he errs, because the claim was not made for myself; I had already exhausted my right. but it was made for a party whom I might put on it afterwards.

Q. That is the correction you desired to make?

A. Yes, sir.

Q. You are acquainted with Mr. Inspector Zevely, before whom this oath was taken? A. Yes, sir.

Q. Are you able to state that he was there at that time? A. I am.

Mr. MAYNARD.—I desire to read this affidavit of Harrison Dodd into the record.

Mr. BICKFORD.—We object to its being read into the record because it is irrelevant and immaterial and not proper rebuttal testimony. Because the testimony has not been properly authenticated or shown to be the testimony of the witness as claimed; because counsel for the defendant in this case had no opportunity of being present to cross-examine or to interrogate the witness with reference thereto, and it is purely as far as counsel for the defense knows or can see, an ex parte statement

(Testimony of Chauncey L. Griswold.)

obtained at a Star Chamber hearing, with nobody represented except the plaintiff in this case, and therefore it is not competent testimony in this case, and is not under any rule of law receivable as evidence in this hearing.

Cross-examination.

(By Mr. WALSH.)

Q. Was the defendant, W. A. Clark, present at the time that deposition was taken?

A. He was not.

Q. Was any of his counsel present? A. No, sir.

Q. Or anybody else representing him there?

A. No, sir.

Subscribed on page 6270 and sworn before me this 16th day of August, 1902.

HENRY N. BLAKE.

Standing Master in Chancery and Examiner.

It is stipulated between the parties that the Examiner may read and correct the testimony of the witnesses, Samuel Dinsmore and Clarence R. Prescott, for the defendant, and upon his certificate the same shall be received with like effect as if read, corrected and verified by the witness.

Said deposition of Harrison Dodd is as folllows, to wit:

HARRISON DODD, called, sworn, testifies as follows:

Q. Where do you live, Mr. Dodd?

A. In the Blackfoot, my postoffice is Bonner, Mont.

Q. What is your occupation?

A. I am a cook by trade; do general work, common laborer.

Q. Are you married?

A. Yes, sir. My wife's name is Lizzie Dodd and she lives with me.

Q. The record in the Helena land office show that you made application for and made final proof for the E. half of the N. E. q. and N. half of the S. E. q. of Sec 18, tp. 14, range 13, under what is known as the Timber and Stone Act, tell me how you got that and all about the transaction.

A. As near as I can, yes. I made this entry in August, 1899, and made my proof in August or September. R. M. Cobban came to me to get me to take out this entry but I had been speaking to Mr. C. L. Griswold about it befrore. Mr. Griswold said to me if I would take out a claim, that he would go look it over and if it was all right that Mr. Cobban would buy it. So I went and looked up some claims with Marion Watson and Mr. Griswold.

Q. Was that claim for yourself and wife, or just for yourself? A. There was six claims we looked over.

Q. Who was they for?

A. Two was for Edgar and Cory Dodd, one was for myself and for my wife, one for G. L. Griswold and one

(Deposition of Harrison Dodd.)

for Matilda Dodd; that for Cora Dodd was described as follows: Lots 3 and 4 and the E. half of the S. W. q. of Sec. 18 tp. 14, range 13. For Edward Dodd the N. W. q. of Sec. 8, tp. 14, rge. 13. For Lizzie Dodd, Lots 5, 6 and 7 and the S. E. q. of the S. W. q. of Sec. 6, tp. 14, rge. 13. For myself the E. half of the N. E. q. and the N. half of the S. E. q. of Sec. 18, tp. 14, rge. 13; and for Matilda Dodd the W. half of the N. E. q. and the S. E. q. of the N. W. q. and lots 2 of Sec. 18, tp. 14, rge. 13, but I cannot give you the description of C. L. Griswold's claim.

Q. Mr. Dodd, after going and looking over these claims, what did you next do?

A. I went down to Missoula, Mr. R. M. Cobban, furnished me the money and we went down to Helena and filed on this land.

Q. What money did he furnish you in the first place and what was the purpose of it?

(Harrison Dodd, page 2.)

A. It was for my expenses to Helena and back, and to file at the land office there for my wife and I and my mother and father.

Q. What are their names?

A. Hiram Dodd and Matilda Dodd.

Q. When did you make the selection for your father?

A. At a subsequent time I selected the S. half of the S. E. q. and the N. W. q. of the S. E. q and the N. E. q. of the S. W q. of Sec. 6 tp. 14 rge 13, for my father.

Q. How much money did Mr. Cobban furnish you at that time?

(Deposition of Harrison Dodd.)

A. My wife, my father and mother and myself came to Missoula and Mr. Cobban was there to give us money to pay our expenses to Helena to make entries under the Timber and Stone Act of the above described land.

Q. How much money did he supply you at that time?

A. I think it was thirty-five dollars for myself, but I do not know what he gave all of them. He was in the habit of giving $26.00 for an entry; I made him raise it with me though, and if I remember it, I think it was about thirty-five dollars.

Q. What was your arrangement with Mr. Cobban when he gave you that money?

A. When we got to Helena, we was to file and then in sixty days we was to go back and prove up and he would then give us $100.00 apiece and the land was to become his immediately. Mr. John B. Catlin went with us to Helena. Yes, I know who he is. I think he is related in some way to Mr. Hearshey.

Q. Where did you meet Mr. Catlin?

A. He was at Mr. Cobban's office.

Q. Did Mr. Cobban send him with you?

A. Yes, sir.

Q. At the expiration of sixty days, what then?

A. We came to Missoula again, my wife and I and my father and mother and went to Mr. Cobban's office and found there Mr. Cobban and Mr. Catlin; we went to the station and Mr. Catlin went with us; we took the train to Helena and Mr. Catlin bought the tickets; and when

(Deposition of Harrison Dodd.)

we got to Helena, we went to the land office, Mr. Catlin went with us, and when we got there, a man named Greene, I think, said this Cobban seems to have quite a lot of interest in this land business; he said that both times when we was there. Then Mr. Catlin took us down to a lawyer named Lincoln Worken, I think,

(Harrison Dodd, page 3.)

I don't remember the document we signed there, but that was where we got our money.

Q. You made final proof? A. Yes, sir.

Q. You got a receipt?

A. No, sir, I did not get hold of any receipt.

Q. Did you pay any money? A. No, sir.

Q. Did anybody pay any money at that time?

A. No, sir, not that I know of.

Q. Who paid the money?

A. Mr. Catlin paid it.

A. Then what happened; were the receipts turned over to him?

A. I did not get any receipts and did not get any money. I owed Cobban and he held it out on me.

Q. Did your wife get hers? A. Yes, sir.

Q. How much did she get? A. She got $100.00.

Q. The $100.00 he was to give you, he credited on what you owed him? A. Yes, sir.

Q. He still owes you $100.00?

A. Yes, sir, and more too.

Q. Your father and mother was paid?

A. Yes, they got some money, but I did not see them

(Deposition of Harrison Dodd.)

get it, but I think Mr. Catlin paid it to them; they got $100.00 each from Catlin, from what them told me.

Q. What was your conversation with Mr. Cobban at his office before going to Helena, what did he say to you?

A. I do not remember the conversation.

Q. Did he say anything about what you was to do?

A. He said for us to go ahead and he would see that we would get $100.00; the understanding was that after we filed and made final proof, that we were to deed the land to Mr. Cobban.

Q. Did you deed it to Mr. Cobban?

A. I did not do any writing, but of course we deeded it to him, to the best

(Harrison Dodd, page 4.)

of my knowledge, the writing we signed was a deed conveying this land to Cobban, this was the conversation and understanding with Mr. Cobban on two different conversations.

Q. When you filed on this land your intention was to secure the land for Mr. Cobban in the consideration of $100.00 he was to pay you?

A. That was the understanding. That was to be the purpose and I did not file on it only for the $100.00 and Mr. Cobban was to pay for that.

Q. That was the understanding among all who did do that?

A. Every one, yes, sir. That was the talk long before I spoke to Mr. Griswold and I knew that that was going on.

(Deposition of Harrison Dodd.)

Q. Did you have anything to do with publishing advertisements, in relation to your purchase?

A. I had nothing to do with the advertisement and the first I knew of it was when I saw it in the "Garnett Mining News." I did not pay for the advertisement.

Q. Did you furnish your own witnesses or were they furnished for you?

A. The witnesses were paid by Cobban and Catlin, and the whole business fixed up by them.

I desire to say on my own account and of my own motion that when we were making our proofs at the land office every time it became necessary for us to answer a question which would have perjured us the officers themselves gave answers.

HARRISON DODD.

April 21, 1901.

Harrison Dodd was sworn by me before this statement was made, and the same was signed by him in my presence.

J. W. ZEVELY,
Special Inspector.

I hereby certify that I have compared the foregoing copy of the deposition of Harrison Dodd with the original, and that the same is correctly copied into this record.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Thursday, August 14th, 1902, at two o'clock P. M.

The hearing was resumed pursuant to adjournment.

C. L. GRISWOLD resumed the stand and was examined further.

(By Mr. MAYNARD.)

Q. Mr. Griswold, you were here when Mr. Dan McGillis was sworn as a witness, were you?

A. I was, yes, sir.

Q. I desire to call your attention to his testimony, and to this portion of it, on the unnumbered pages of the record. The question is, "Where were you living in the spring of 1899?" A. Clinton, Montana.

Q. Were you in Missoula County during that time?

A. Why, yes.

Q. Do you remember seeing Mr. Griswold there?

A. Why, yes, I used to see him there.

Q. Do you remember of his having a suit against Cobban; do you remember of hearing about the suit?

A. All I heard was that there was a suit, something about timber, that is all.

Q. Well, at that time, and in the city of Missoula, in front of the Higgins Block, did you not have any conversation with him, and in that conversation did you not tell Mr. Griswold substantially as follows, that in the rush of people that were taking up claims—timber claims, you thought that you would join them, and you went and saw Stephen Tepper, who had worked for Mr. Griswold, and asked him if he would get you a claim, and that Tepper said that he could get you a

(Testimony of Chauncey L. Griswold.)

timber claim, and that Tepper told you who he was working for, and that if he located you, you must go at once after you had made up your final proof, and got the receiver's final receipt, you must convey to Cobban, who would furnish you all the money that was necessary over and above all expenses. And that you agreed to that, and that you did carry it out and get a hundred dollars from Mr. Cobban, to pay your expenses, didn't you tell Mr. Griswold that in that conversation?"

(After some objections and so on, he answered.)

"A. No, not that I know of."

—You may state as to what you have to say with reference to that testimony, Mr. Griswold.

By Mr. WALSH.—We object to this upon the ground that it is an attempt upon the part of counsel for the Government to contradict and impeach his own witness; and for the further reason that the testimony is not rebuttal and is hearsay, and for the further reason that the alleged declarations were made long after the time that McGillis had parted with his title, if they were ever made.

A. Well, some portions of that statement are correct, and some portion of it is not correct.

Q. Well, what is the fact about that , Mr. Griswold?

By Mr. WALSH.—We object to this upon the ground that it is an attempt upon the part of counsel for the Government to contradict and impeach his own wit-

(Testimony of Chauncey L. Griswold.)

ness; and for the further reason that the testimony is not rebuttal and is hearsay, and for the further reason that the alleged declarations were made long after the time that McGillis had parted with his title, if they were ever made.

A. Mr. McGillis did positively tell me on the steps of the Higgins Block in Missoula that this agreement was all made before he went to locate on the land, and that Mr. Cobban was to furnish money for him to make his filing and complete his final proof, and transfer the land to him.

Q. What have you to say about the time and place that that conversation took place, with reference to the time and place that I called the witness's attention to?

A. Well, it was during the time that this suit was pending in the courts over there in Missoula.

Q. And with reference to the place?

A. Why, the place was—

Q. I said the place was in front of the Higgins Block? A. Yes, sir.

Q. Now, I have forgotten whether your attention was called to the testimony of Mr. Bryan in a conversation that you had with him in Butte. Perhaps my brothers may correct me if I have asked you about it. Do you remember whether your attention was called to that or not?

A. It has been called to my attention one of the times that Mr. Bryan testified about, and whether it

(Testimony of Chauncey L. Griswold.)

was called to my attention during the last part of his evidence or not, I am not positive. I am under the impression that it was.

Q. Do you recall the testimony of Mr. Bryan with reference to some declaration that you made to him?

A. I do.

Q. What is the truth in regard to that matter, Mr. Griswold?

By Mr. WALSH.—We object to that for the reason that it is not rebuttal testimony, and is an evident attempt upon the part of counsel for the Government to contradict his own witness, and its own testimony, and to impeach his own witness, and further, for the reason that no testimony at all was submitted on behalf of the Government with reference to it, and the Government has no right to submit any rebuttal testimony upon a matter to which the defendant did not testify.

A. In the testimony of Mr. Bryan wherein he alleges that I told him in the city of Butte that I had sworn falsely in this case, and would do so again in order to win it, is absolutely false. I never made any such assertion to Mr. Bryan, or any other person.

Q. I now call your attention to the testimony that was given by Allen Dodd. Do you recall that?

A. Yes, sir.

Q. Do you recall that with reference to something about liquor, do you remember that?

A. Yes, sir.

(Testimony of Chauncey L. Griswold.)

Q. What was that, Mr. Griswold?

A. My recollection of Mr. Dodd's testimony is, that he alleged that I got him drunk before going before Mr. Zevely in Missoula, at which time and place he was supposed to, and did, in fact, give his testimony in regard to these different locations that he and his family made, that are mentioned and included in the bill of complaint in this case.

Q. What is the truth in regard to that matter?

A. Well, the truth is, and the facts were, that Mr. Dodd was not intoxicated or drunk.

Q. What is that?

By Mr. WALSH.—We object to that for the reason that it is not proper rebuttal testimony, and the matter has been thoroughly gone into by the Government in its case in chief.

Q. What did you say, Mr. Griswold?

A. He was not intoxicated or drunk in any sense of the word. And since the taking of his testimony he had admitted the same.

By Mr. MAYNARD.—I cannot now think of any other matter that I desire to ask Mr. Griswold at the present time, and if the gentlemen on the other side wish to cross-examine Mr. Griswold, I am willing for them to do so now.

(Testimony of Chauncey L. Griswold.)

Cross-examination.

(By Mr. WALSH.)

Q. What were those deeds you referred to as having been brought by you from Missoula to Helena?

A. I don't think I referred to any deeds having been brought from Missoula to Helena.

Q. Didn't you, in the course of your direct examination speak of certain deeds having been prepared by you, and that you brought them along here to Helena?

A. No, sir, I think not.

Q. Now, you testified that there was an agreement between you, representing Mr. Cobban on the one side, and Mr. McConnell and Mr. Sperry severally on the other side, by which they agreed to enter this land, and afterwards convey to Mr. Cobban, and you upon your part informed Mr. Cobban—informed them, that Mr. Cobban had agreed that he would pay them a hundred dollars for doing so. Was that the substance of your testimony concerning that matter?

A. Well, yes, something similar, that is, something similar to my testimony.

Q. You had an agreement substantially to that effect with these gentlemen, did you not?

A. Yes, sir.

Q. And you on your part agreed, as I understand you, that upon their conveyance of the property to Mr. Cobban, after they should make final proof, that Mr. Cobban would pay them a hundred dollars?

(Testimony of Chauncey L. Griswold.)

A. Yes, sir.

Q. In other words, they agreed to sell, and you agreed to buy?

A. I don't know that they agreed to sell. They went and located a claim, and took up the land.

Q. Well, they agreed to convey, they agreed to make a deed, didn't they?

A. Well, yes, I will say that they did.

Q. And in the same connection you testified that you had made practically the same agreement, with some possible variation as to the amount or something of that kind, with every one of these entrymen and entrywomen, with whose entries you were connected.

A. That was the understanding, yes, sir.

Q. No, I am not asking you about the understanding, I am asking you if you testified, that you had made a similar agreement with these several parties?

A. I couldn't say whether I testified to that or not.

Q. You couldn't say whether you testified to that this morning or not?

A. I don't know, there is so much of it, that I couldn't remember.

Q. Now, I am speaking about this morning.

A. This morning?

Q. Yes, sir, did you not testify that you had made substantially that same agreement with these other entrymen and entrywomen, that you had made with Mr. McConnell, and Mr. Sperry?

(Testimony of Chauncey L. Griswold.)

A. I did not, because I didn't make any agreement with these other entrymen—with every one of these other entrymen.

Q. With every one with which you were connected?

A. I couldn't say that.

By Mr. MAYNARD.—The record speaks for itself.

Q. Well, what is the fact about the matter, Mr. Griswold, whether you did or did not make a similar agreement with other entrymen and entrywomen, which you made with Mr. McConnell and Mr. Sperry?

A. There were others that I made similar agreements with, yes, sir.

Q. I wish you would look at that paper which I give the Master to mark.

By the EXAMINER.—This paper will be marked Defendant's Exhibit No. 348.

(Counsel hands witness exhibit referred to, exhibit No. 348.)

Q. State if you recognize what that is?

A. I do, yes, sir.

Q. What is it?

A. It is a copy of a part of some sworn testimony that I gave before Mr. Zevely in Missoula. I don't think though, there is any date to it.

Q. Well, it is the copy of the testimony that you gave before Mr. Zevely, upon his investigation of this matter, immediately before the institution of this

(Testimony of Chauncey L. Griswold.)

suit, and which has been referred to in the testimony here repeatedly, is it not?

A. I have never seen it. I don't know because I have had no chance to inspect the paper, except just at this instant, and I cannot say that it is. It is an unsigned and mutilated paper, and what it is I have no idea.

By the EXAMINER.—Very well, you can examine it.

By Mr. MAYNARD.—I will ask counsel for the defendant what this paper is?

By Mr. WALSH.—I am asking the witness, he will tell us.

By Mr. BICKFORD.—He has told us, in fact, already.

By Mr. MAYNARD.—Well, we object to the introduction of the paper, because—

By Mr. WALSH.—We haven't offered any paper in evidence yet.

Mr. MAYNARD (Continuing).—I object to counsel for defendant using the same as a basis for the cross-examination of the witness, because the paper is apparently mutilated, and purports to be a copy of something, that I know not what. It is unsigned, undated, and unsworn to, and until counsel explains what he claims the paper is, or what it is, I object to the cross-examination of the witness upon that paper.

Q. It is a copy of the testimony that you gave before

(Testimony of Chauncey L. Griswold.)

Mr. Zevely, upon the investigation of this matter, immediately before the institution of this suit, and which has been referred to in the testimony here repeatedly, is it not? A. Well, I would like to see it.

(Paper referred to, exhibit No. 348, handed to witness.)

A. From an examination of the paper, I should judge that it was a portion of the testimony that I gave before Mr. Zevely about the time that this suit was started, and one of the conditions of the settlement of the suit between myself and Mr. Cobban, was that that was turned over to Mr. Cobban at the time that the itemized statement of account was turned over to him.

Q. You recognize it, do you not, as a copy of your testimony that you turned over to Mr. Cobban, and his attorneys, as being a copy of the testimony that you gave before Mr. Zevely?

By Mr. MAYNARD.—Before you answer that question, Mr. Griswold, I would like to have the Examiner advise the witness that he should look at it, and see what the paper is.

By the EXAMINER.—He can look at it for himself.

By Mr. MAYNARD.—If he is satisfied by some marks upon it or some date, or something of that kind that he knows that it is.

A. I have no means of knowing whether it is the paper or not, and I couldn't say whether this is the paper, or is not the paper. There is not one single thing on it by which I can identify it. There are no marks

(Testimony of Chauncey L. Griswold.)

on it, and no dates, and no anything, and therefore I cannot say whether it is a copy of the testimony I gave on that occasion or not.

Q. Well, give us your best judgment.

A. I don't care to my judgment under oath.

Q. Give us your best judgment as to whether that is or is not the paper which you turned over to Mr. Cobban, or his attorneys, immediately before the institution of this suit?

A. Under oath, I could not do so. I could not give my best judgment under oath.

Q. You refuse to tell us whether in your judgment it is or is not? A. I surely do.

By the EXAMINER.—Well, I think the witness ought to answer it one way or the other. He can examine the paper, and take any reasonable length of time to do so.

A. There is no use of my examining it, because there is nothing in it, or on it that I can recognize it by.

Q. Possibly if you look at the testimony you will be able to recognize it, and to say whether you gave that testimony or not.

A. Well, I should say that it was a portion of the testimony that I gave before Mr. Zevely.

Q. Now, with reference to the mutilations about which counsel has made mention, you testified, did you not, at the time that this was turned over, the remainder of the testimony was cut off by your own express request?

A. I don't remember testifying to that.

(Testimony of Chauncey L. Griswold.)

Q. Well, that is a fact, isn't it?

A. I believe that I did object to giving the whole of it, the entire testimony to Mr. Cobban, because there were things in it that were entirely foreign to this case, or to the State of Montana.

Q. And it was agreed that you and Colonel Marshall should look it over, and determine that?

A. I had nothing to with looking it over with Colonel Marshall.

Q. Well, it was submitted to Colonel Marshall to see what portion of it had any reference to this case, wasn't it?

A. Colonel Marshall agreed that it didn't have anything to do with it. He didn't agree with me.

Q. But at your request it was cut off, was it not?

A. It was.

Q. And you objected to turning it over to Mr. Cobban or his attorneys, didn't you? A. Yes, sir.

Q. And you wouldn't turn it over to them?

A. No, sir, not with that part of the testimony on it.

Q. And it was cut off, was it? A. Yes, sir.

Q. And with that exception, it is your testimony, is it not, Mr. Griswold?

A. I couldn't say that it absolutely is.

Q. Your best judgment is that it is the paper that you turned over to Mr. Cobban or his attorneys?

A. I couldn't say on my judgment anything about it. I can simply say that it is a portion of the testimony that I had given before Mr. Zevely before this suit was commenced.

(Testimony of Chauncey L. Griswold.)

Q. I call your attention to this portion of the testimony found in the exhibit marked No. 348: "When you yourself sent parties on land for the purpose of filing either direct or through either of these agents, what was your understanding with them?

A. The understanding was that they were to file and make final proof, and Mr. Cobban would pay the expenses incurred in going to file and making final proof, and was to pay them in addition one hundred dollars." Did you so testify before Mr. Zevely?

A. I believe I did.

Q. And also the following question:

"Did he ever pay more?"

To which you answered: "I think he did, in one or two instances. Usually, however, a hundred dollars, but on some occasions more."

Did you so testify?

A. I believe that I did.

Q. And also the following question: "This is true of all the persons whose names appear in the deposition there, together with the description of land set opposite their names?" To which you answered: "Yes, sir, to the best of my knowledge." Did you so testify?

A. I presume that I did.

The question was also asked you: "Did you ever make any agreement with any person that Mr. Cobban would take that land at that price?"

To which you answered: "I never did, the understand-

(Testimony of Chauncey L. Griswold.)

ing was that Mr. Cobban was to take the land at that price."—Did you so testify?

A. That is correct, but I understood you by that agreement, a contract in writing.

By Mr. WALSH.—We move to strike out the answer of the witness in which he said that he understood by "agreement" a contract in writing.

Q. I will read the rest of that answer: "The understanding was that Mr. Cobban was to take the land. This was Mr. Cobban's instruction to me." You may answer whether you so testified at that time or not.

A. I presume that I did, I couldn't say that I did or I did not.

Q. You were questioned about this suit that you had had in Missoula. In that suit you were seeking to recover a sum of money from Mr. Cobban you told us?

A. Yes, sir, not seeking to recover, but seeking to get him to pay me under the terms and conditions of the contract.

Q. You claimed to have done certain work under this contract, for Mr. Cobban? A. Yes, sir.

Q. And that you did receive only a certain amount of the pay, and that there was still something due you?

A. Yes, sir.

Q. Mr. Cobban, on his part, claimed that you hadn't done the amount of work that you claimed you had done? A. I believe that is it.

Q. And you claimed he should pay you more than the amount that he did pay you?

(Testimony of Chauncey L. Griswold.)

A. I believe that is the position Mr. Cobban took.

Q. Well, was there any other controversy in that action? A. I hardly know what you mean.

Q. Was there any other question that was in controversy in that action except the amount of work that you had done, and the amount of pay that you received, and that you were to receive?

A. I think there was one or two items.

Q. What was the other controversy?

A. I wouldn't attempt to say at this time, but the itemized statement that is in the hands of the Honorable Examiner will show that.

Q. Well, that itemized statement merely purported to state what work you had done, and what payments you had received? A. Yes, sir.

Q. The controversy between you was as to those two amounts, wasn't it? A. How is that?

Q. Was there any contention between you with reference to any other matters?

A. There were some other matters.

Q. What was the matter that was in dispute between you that wasn't in this statement of account, including the work that you had done, and the amounts that you had been paid, and the amount of money you claimed that you were entitled to receive?

A. I don't know at this time. I cannot say.

Q. You don't know of any other question that was involved in that lawsuit, do you?

A. My recollection is that there was.

(Testimony of Chauncey L. Griswold.)

Q. Well, what was it?

A. Well, I cannot tell you.

Q. You don't know? A. No, sir.

Q. I wish you would state whether at any time during the course of that controversy, you gave any testimony as to any arrangement that you entered into, or made with any one of these entrymen?

A. Well, I couldn't say that.

Q. Can you say that you didn't say anything of the kind?

A. I wouldn't say either one way or the other.

Q. You cannot tell anything about it?

A. No, sir.

Q. Can you tell us of any other testimony given by Mr. Cobban, a copy of whose testimony seems to be in the possession of the counsel for the Government, that had any reference whatever to the question as to what the arrangements or agreements, or understandings were entered into between himself and any of these entrymen?

A. Why, it is an utter impossibility for me to tell what Mr. Cobban's testimony was in that case.

Q. Well, do you recall any such testimony?

A. I certainly do not.

Q. Nor any testimony on your own part?

A. I know that there was testimony both on my part, and on the part of Mr. Cobban, but what it was I cannot remember now.

(Testimony of Chauncey L. Griswold.)

Q. Are you able to tell us any testimony given either on the part of yourself or Mr. Cobban, that had any sort of relation to the question as to what agreements were entered into between these entrymen and yourself and Mr. Cobban?

A. I cannot; I cannot remember the testimony.

Q. You cannot tell whether any testimony was given by Mr. Cobban relative to any agreement made with these entrymen or entrywomen?

A. I cannot say whether there was or was not.

Q. You cannot say whether the testimony given by Mr. Cobban related to it or not?

A. I cannot say whether it did or did not.

Q. You cannot say that it did? A. No, sir.

Q Have you now any knowledge of any question to which it would be in any manner relevant in that inquiry?

By Mr. MAYNARD.—We object to that upon the ground that it is purely a question of law, and that Mr. Griswold is not called upon to express a legal opinion upon that or any other matter. The question is as to the effect, and therefore the question is one improper, and impossible for a layman to answer.

A. Why, I wouldn't attempt to say.

Q. You wouldn't attempt to say? A. No, sir.

Q. Well, as a matter of fact, you know, don't you, that the question as to whether these entrymen did or did not make an agreement that they were to convey the

(Testimony of Chauncey L. Griswold.)

land to Mr. Cobban after it was proved up on, was not a subject that was referred to in any manner in that lawsuit?

A. I don't know anything about it. I don't remember whether it was referred to in the lawsuit or not.

Q. You don't know about that?

A. No, sir, I cannot remember.

Q. You cannot say that it was?

A. No, sir, and I wouldn't attempt to say that it was.

Q. And you don't know of any possible question that was involved in the case that called out any testimony concerning that matter?

By Mr. MAYNARD.—That same question was asked the witness just a moment ago, and we therefore object to it upon the ground that it is purely a question of law, and that Mr. Griswold, being a layman, is not called upon to give a legal opinion, and it would be impossible for him to do so. The lawyers who had charge of the case would perhaps be competent to testify to that.

A. I have answered the question two or three times, and I refuse to answer it again.

By the EXAMINER.—Well, you must answer it again. Counsel may not understand your answers.

A. There might have been many, and there might not not have been one. At this time I cannot say.

Q. You don't know of any that might have been involved in that matter?

(Testimony of Chauncey L. Griswold.)

A. I don't know of any, and I don't know but what there might have been some.

Q. Did you read over Mr. Cobban's testimony that your attention was called to this morning, that was given on that trial?

A. I believe that I did.

Q. When did you read it?

A. At various times.

Q. When last did you read it?

A. Why, I think within the last day or two. I think I have read over portions of it.

Q. Do you remember any inquiry made in the course of the examination, Mr. Cobban, on that hearing, that had any reference to the question as to what agreements were made with these entrymen?

A. That was in Missoula?

Q. Do you recall having read this testimony of Mr. Cobban's only a day or two ago, and finding any evidence given by him, at any time touching that question?

A. I don't recall now that there was. It is quite a lengthy document, and I cannot commit it all to memory.

Q. Well, do you recall anything about any question having arisen in that case at any time as to whether Mr. Cobban was, or was not to buy these claims of these persons who entered timber claims?

A. I wouldn't attempt to say.

Q. What do you recall with reference to any controversy that arose at any time, or any testimony

(Testimony of Chauncey L. Griswold.)

given, in reference to any question, as to whether he was to loan money upon mortgages, upon these claims?

A. Well, I wouldn't say whether he mentioned that or not; I cannot remember.

Q. Now, I call your attention to this itemized statement which appears among the files of the case that you refer to, and ask you who drew that up?

A. Well, at this time I am unable to say.

Q. You were testifying from that this morning, that it, the itemized statement from which you read off this list of names?

A. I believe it is what is called the bill of particulars.

Q. Well, that is the matter that you read from this morning, is it not? A. Yes, sir.

Q. And that is the matter concerning which you were interrogated, was it not?

A. Portions of it, yes, sir.

Q. And this statement purports to set out the amount that was due from you—due to you from Mr. Cobban, and the amount of credits which you gave him?

A. Yes, sir.

Q. In other words, it consists of the amount, and states the amount for which you claimed pay, and the amount of money that he gave you?

A. No, sir, it doesn't anything of the kind.

Q. What is it? A. That isn't right.

Q. What is it then?

(Testimony of Chauncey L. Griswold.)

A. The amount that I claimed, but not the amount that he gave me.

Q. The amount that you claimed, and the amount that you claimed he paid you?

A. No, sir, he didn't pay the amount that I claimed there in this bill of particulars.

Q. Have you set out in this bill of particulars a greater amount than he paid you? A. Yes, sir.

Q. How much more have you set out than he paid you?

A. Mr. Cobban paid me fifteen hundred dollars.

Q. But, Mr. Griswold, you don't misunderstand?

A. I certainly do.

Q. At the time you instituted this suit, and this bill of particulars was called for, the bill of particulars was intended to tell the Court how your account stood at that time, was it not? A. Yes, sir.

Q. Now, you omitted on that account to give Mr. Cobban credit for $500.00?

A. There was two or three items left out.

Q. You did, didn't you? A. Yes, sir.

Q. You also omitted to give him credit for $270.00 cash that he gave you, didn't you?

A. That was a matter that I had omitted. Mr. Cobban had charged it to me, and given me credit for it, and I couldn't for the life of me tell whether I had received the money or not. And I wanted his receipt or some acknowledgment from myself that he had paid it

(Testimony of Chauncey L. Griswold.)

to me. As soon as Mr. Cobban produced the receipt I gave him, I made no further contention in the matter. And I would like to state further, that the matter of this check for $500.00 was through an oversight in myself and my attorney, in not giving Mr. Cobban credit for it in his itemized bill of particulars.

Q. Well, at the trial you were confronted with a check for $500.00 that you had been paid, and that you hadn't credited Mr. Cobban with, weren't you?

A. Well, I had—

Q. Answer if that is true? A. Yes, sir.

Q. You were confronted with another check of $250.00 that you had been paid, and which you didn't credit on the account that you had, weren't you?

A. I have no recollection of it.

Q. I will ask you whether you at that time didn't testify as follows: "Look at that check dated May 20th, 1900. What is it? A. It is a check dated May 20th, 1900, for $250.00, payable to my order, and endorsed to me.

Q. Now, did you get that money? A. I think I did."

Q. Is it credited to Mr. Cobban? A. No, sir.

Q. It is drawn by Mr. Cobban, is it not?

A. Yes, sir.

Q. Did you so testify?

A. Well, I couldn't say.

Q. Well, will you swear that you didn't?

(Testimony of Chauncey L. Griswold.)

A. No, I wouldn't swear that I did or did not. I really cannot remember.

Q. Well, you were confronted with another check of $250.00 that you got and didn't give him credit for in this bill of particulars, weren't you?

A. I was confronted with a great many things.

Q. Well, answer this question, were you not confronted with a $250.00 check that you have not given Mr. Cobban credit for?

A. I couldn't say whether I was or was not.

Q. Mr. Cobban paid you $250.00, didn't he?

A. No, sir, he did not.

Q. Look at that paper, Mr. Griswold, what is that?

A. It is a check on the First National Bank.

Q. Drawn by whom? A. By Mr. R. M. Cobban.

Q. In whose favor? A. C. L. Griswold.

Q. For what amount?

A. A hundred and fifty dollars.

Q. Does it bear your endorsement, Mr. Griswold?

A. I believe it does.

Q. Did you get the money? A. Yes, sir.

Q. Is that amount credited to Mr. Cobban?

A. It doesn't appear on the bill.

Q. Did you so testify? A. I couldn't say.

Q. Well, isn't it a fact that you did get this a hundred and fifty dollar check that wasn't credited upon this bill of particulars?

A. I tell you that I cannot remember.

(Testimony of Chauncey L. Griswold.)

Q. But you may have done?

A. If I so testified in that place, it is the truth.

Q. I see on this first page of this bill of particulars an item of $91.75 to expenses Oregon and return?

A. Yes, sir.

Q. Did you in the bill of particulars put down any amount to offset that item? A. I did not.

Q. As a matter of fact, Mr. Cobban gave you a hundred dollars to pay your expenses to Oregon, didn't he?

A. Yes, sir.

Q. And you didn't give him credit for that amount either, did you?

A. No, sir, for the simple reason that Mr. Cobban was paying me money right along, almost daily for different purposes, and he was always charging it up to me, and in almost all cases I would bring back a bill of my own expenses.

Q. Now, you read from the bill of particulars this morning a list of the claims commencing with Oscar Muckenheirm, and ending with H. C. Dormans, and you told us that each of those claims was taken under an agreement substantially the same as the agreement which you say was entered into with Mr. McConnell and Mr. Sperry?

A. I don't think I so testified.

Q. With the single exception of the Donnegan claim? A. I don't think I so testified.

Q. Well, what did you testify to?

(Testimony of Chauncey L. Griswold.)

A. I testified that they were taken up, with one or two exceptions, under the Stone and Timber Act.

Q. And is that all you testified to concerning the claims named in the last page of the bill of complaint?

A. I wouldn't say whether that was all I testified to or not.

By Mr. MAYNARD.—The testimony that the witness gave this morning was taken by the stenographer, and exactly what Mr. Griswold testified to is in the record, and I ask my brethren to call the attention of the witness to that testimony. It is the best evidence of what the witness testified to.

Q. I wish you would state whether you did not this morning testify, when you were asked by counsel concerning those claims, that every one of these claims, with the single exception of the Donnegan claim, was taken up under an agreement to convey the same, and upon substantially similar conditions to that which you testified existed in the case of McConnell and Sperry?

By Mr. MAYNARD.—I repeat that what the witness testified to this morning was taken down by the stenographer and just exactly what he testified to now appears upon the record, and I ask that the witness' attention be called to that testimony that he gave if he is to be questioned in regard to the matter. And I would suggest that Mr. Macdougall, the stenographer who took the testimony, be called in, and his notes referred to.

(Testimony of Chauncey L. Griswold.)

By Mr. WALSH.—I am perfectly willing that you should call in Mr. Macdougall if you want to, but I don't want to call him.

By Mr. BICKFORD.—We have a perfect right to test the credibility of this witness, and his memory, and the accuracy of his testimony as given this morning with that which he has given at other times.

By the EXAMINER.—Yes, it isn't necessary to call the stenographer for that.

A. I did not so testify to the best of my recollection.

Q. What were you asked this morning, and what were you saying about those claims?

By Mr. MAYNARD.—I insist that the question is entirely too general, and too indefinite for any live man to intelligently answer.

A. I couldn't say. I was asked a great many questions about different things this morning.

Q. About that list?

A. About that list, yes, sir.

Q. You read over that list, did you not? And the number of thousand feet in each claim?

A. Yes, sir.

Q. Now, what question was that an answer to Mr. Griswold? A. That I couldn't say.

Q. You don't know, but anyway this list of claims was the basis of the claim at the head of the account, which indicates that you were entitled to five cents a thousand on this number of feet of timber, 138,635,000?

(Testimony of Chauncey L. Griswold.)

A. You will have to make the question plainer; I cannot answer it, I don't know what you want.

Q. The aggregate of 138,635,000 feet is the aggregate of feet of timber, is it not? A. No, sir.

Q. What is it then?

A. There is a great many more than is included in this bill of particulars.

Q. Just look it over then?

A. This is for 138,635,000 feet. There are lots and lots of claims that are not included in this. This is outside of the scrip lands.

Q. What is that schedule attached to that bill of particulars? A. Which one?

Q. The one that is there before you?

A. This? (Witness refers to exhibit to bill of particulars.)

Q. Yes, what is it on there for?

A. Well, sir, I don't know what it is on there for, I don't know why it is here. I couldn't tell you that.

Q. It don't have any meaning at all?

By Mr. MAYNARD.—What paper is that you are calling the attention of the witness to?

By Mr. WALSH.—It is the bill of particulars furnished by Mr. Griswold in his case of Griswold vs. Cobban.

A. My recollection of this is, that there was a demand made upon those parties, Mr. Hershey and Mr. Howell, for the payment for 138,635,000 feet, and they

(Testimony of Chauncey L. Griswold.)

objected to it, and it seems that they had been handed a bill containing the claims which had been located under the Stone and Timber Act, and in other ways, for which I claimed pay, amounting in all to 138,635,000 feet. Therefore, this is an amended bill. That is my recollection of it.

Q. You read this list of claims off to counsel this morning, did you not? A. I surely did.

Q. And you don't know what it means now?

A. I surely do.

Q. Well, tell us what it does mean.

A. Those names—means that those names, the names of the parties who took up land under the Stone and Timber Act, with one or two exceptions. There is one or two homesteads in there.

Q. That is what it means? A. Yes, sir.

Q. The list that you read from this morning, simply is a list of persons who took up lands under the Stone and Timber Act? A. A portion of it.

Q. A portion of the persons that took up land under the Stone and Timber Act? A. Yes, sir.

Q. And the list that you read from doesn't mean any more than that; you mean the timber on it?

A. It meant something more to me at the time it was made.

Q. What does it mean here?

A. I don't know what it means here.

Q. Well, does it mean anything more than that a partial list of the persons taking up lands under the

(Testimony of Chauncey L. Griswold.)

Stone and Timber Act, with the amount of timber on each claim?

A. I don't know that it does. I don't know what significance might be attached to it.

Q. Anyway, these claims were embraced in the claims of timber, which aggregated 138,635,000 feet?

A. I believe they were yes, sir.

Q. What did you have to do with the claim of L. S. Jakways?

A. I looked the claim over and was instrumental in getting it for Mr. Cobban.

Q. Well, instrumental, you know, is a little indefinite. What did you do; you looked the claim over?

A. Yes, sir.

Q. What else did you do?

A. I don't think I did anything else; I don't think I had anything else to do.

Q. What did you do with the E. Z. Faust claim?

A. I was instrumental in getting it for Mr. Cobban.

Q. What does instrumental mean?

A. I went with Mr. Cobban.

Q. Where did you go with Mr. Cobban?

A. From Ovando to look over these claims.

By Mr. MAYNARD.—So much so that Mr. Cobban, out of a sense of gratitude for opening up that country, gave him more than he claimed.

Q. What did you have to do with the claim of C. E. Johnson?

(Testimony of Chauncey L. Griswold.)

A. That was the same. Those three claims were about the same. They were bought under about the same conditions and circumstances.

Q. Now, if you did say this morning as—

The WITNESS.—The record will show.

(Question continued.) You did that in each one of the instances, of the claims included in the list from which you read this morning, and about which counsel interrogated you, that the same agreement had been entered into as in the case of McConnell and Sperry, do you desire now to correct that?

A. If it says anything of the kind, I surely do desire to correct it, and surely shall correct it before signing it.

Q. What did you have to do with the claim of Herman Spiker?

A. I met Mr. Spiker here in Helena. He came here to file upon a piece of land, and there was a gentleman filed just, I think, a day ahead of him, and he was feeling somewhat discouraged over the fact that he had lost his claim, and I told him to go back into the same section, and I thought there was another claim there. He did so, and came back here and filed on it, and made his final proof, and finally conveyed it to Mr. Cobban.

Q. That is all you did about that? A. Yes, sir.

Q. What did you have to do with the claim of Vital Cyr?

A. I looked over the claim the same as I did some of the others.

(Testimony of Chauncey L. Griswold.)

Q. What did Mr. Cobban have to say to you about the claim of Vital Cyr?

A. There are two Cyrs, and they both come under the same head. He said that he would like to have me go and look the land over; that he wasn't satisfied as to the amount of timber on it, either to advance the money, or to make their final proof on. I went and looked the land over and came back and reported to Mr. Cobban as to the amount of timber that I estimated was on the claims.

Q. You have heretofore testified in this case that you had nothing whatever to do with those claims.

A. I don't think I have.

Q. Did you ever say in answer to the question of counsel that you knew absolutely nothing about those claims?

A. I don't think so. I don't think I said anything of the kind.

Q. Now, you told us about the conversation that you had with Mr. Kendall in Missoula? A. Yes, sir.

Q. This was about the time that you made this expedition into the Bitterroot country that you told us about, is it not?

A. Yes, sir, it was on that trip, while I was in there.

Q. Well, where was it that you had this conversation with him?

A. I had a talk with Mr. Kendall several times in there. Mr. Kendall used to come to our tents, and I saw Mr. Kendall at his camp once or twice.

(Testimony of Chauncey L. Griswold.)

Q. I am talking about this conversation in which the thousand dollars was talked about.

A. It wasn't talked about at all with Mr. Kendall.

Q. Didn't you so testify this morning?

A. No, sir, I did not.

Q. Didn't you testify this morning that Mr. Kendall offered you a thousand dollars to suppress a report that you ought to have made with reference to this matter.

A. I do so testify, but it wasn't in the Bitterroot.

Q. Well, where was it?

A. Well, I couldn't say whether it was on room 7 or 8 of the Rankin House, in Missoula.

Q. Well, what region are you referring to?

By Mr. MAYNARD.—He says Room 7 and 8 in the Rankin House in Missoula. He says that is where the conversation took place.

A. That is the region, in the city of Missoula.

Q. I ask you if you didn't have this conversation at Missoula concerning this thousand dollars?

A. No, sir, you asked me if I didn't have it in the Bitterroot. That is the way I answered it.

Q. You didn't have this conversation in the Bitterroot?

A. I had the conversation in room 7 or 8 in the Rankin House in Missoula. That is the way I answered it.

Q. You had a talk with him in Missoula, then, about this thousand dollars? A. Yes, sir.

(Testimony of Chauncey L. Griswold.)

Q. And that was at or about the time that you made this expedition into the Bitterroot country?

A. Yes, sir.

Q. With Mr. Easterly? A. Yes, sir.

Q. How long afterwards was that?

A. That I couldn't say.

Q. Approximately? A. I couldn't say.

Q. Was it a year after?

A. I couldn't say as to that.

Q. Was it two years after? A. I couldn't say.

Q. Was it three years after? A. I couldn't say.

Q. Was it four years after?

A. I couldn't say, it might have been fifteen minutes.

Q. You couldn't come within four years of it?

A. I wouldn't attempt to come within four years of it. I couldn't say when it was, and I am not guessing now.

Q. I am not asking you to guess. I am asking you to tell when it was with reference to the time that you were in the Bitterroot? A. And I couldn't do that.

Q. I wish you would tell what the report was that you spoke about?

A. It was a report that I had in my possession, and was prepared to make.

Q. With reference to what?

A. The timber situation in the Bitterroot.

Q. Well, how was Mr. Kendall interested in the report? A. He was cutting timber in that country.

Q. And it was to the effect that he was cutting timber upon the public lands? A. Yes, sir.

(Testimony of Chauncey L. Griswold.)

Q. What position did Mr. Kendall then occupy?

A. Well, I understood he was logging for the Anaconda Copper Combpany, or the Bitterroot Development Company; I don't remember just which now.

Q. One of those companies anyway?

A. Some of those companies at which Mr. Daly was at the head.

Q. Mr. Kendall at that time, as I understand you, offered a thousand dollars to you not to make the report?

A. Which time?

Q. At the time that he made you the offer?

A. Yes, sir, he did.

Q. That is what the offer was for?

A. Yes, sir, not to make—I would like to say not to make the report, but to withhold it a certain length of time, allowing him to complete his cutting and skidding, and his logging contract.

Q. What official position did you hold at that time?

A. Didn't have any.

Q. You were acting on your own acount as I understand you? A. Yes, sir.

Q. Not in the employ of anybody? A. No, sir.

Q. When did you file the report?

A. I didn't file any report at all.

Q. You did withhold it then? A. Yes, sir.

Q. Did you get a thousand dollars for withholding it?

A. I wouldn't answer that.

Q. You will have to answer the question.

(Testimony of Chauncey L. Griswold.)

By the EXAMINER.—Yes, sir, you must answer the question.

A. Yes, sir, I got it.

Q. And you withheld the report?

By Mr. MAYNARD.—He withheld information which he was under no obligation to give.

A. I didn't withhold any report because I had no report .

Q. Mr. Kendall at that time, as I understand you, assured you positively that this money would have to come out of his own pocket and not from Mr. Daly or the Bitterroot Company, or any of those companies.

A. He surely did, and told me at the time that there would be more whenever I asked for it. And any assistance he could render me he would be glad to do it.

Q. How did he come to impress you with the knowledge that this money was coming out of his own pocket?

A. I couldn't say.

Q. That was because you expected a great deal more out of Mr. Daly, and the companies with which he was connected. A. I did not.

Q. He was trying to beat you down by representing that it came out of his own pocket; wasn't that the fact?

A. No, sir.

Q. But you didn't know the reason why he had told you this other thing?

A. I have no way of knowing more than it might be in conformity with the statement that Mr. Bean had

(Testimony of Chauncey L. Griswold.)

made to me in the Bitterroot, up in the woods, where he said that Mr. Daly had nothing to do with it, and would not recognize us in any way, shape or manner.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Just one or two questions; Do I understand that this exhibit No. 368 was introduced in evidence, Mr. Examiner?

By Mr WALSH.—No, it wasn't offered in evidence, but we have no objection to you offering it in evidence. We haven't offered it, we offer only that portion of it that we have interrogated the witness about.

By Mr. MAYNARD.—I offer the same in evidence now then as a whole.

By Mr. WALSH.—Well, wait one moment. We object to the offer of the paper in evidence unless it is proven or stated by the witness that this is the testimony given by Mr. Griswold before Mr. Zevely.

By Mr. MAYNARD.—Very well, I will state the facts here as you brought them out in regard to that.

By Mr. WALSH.—Well, Mr. Griswold wouldn't admit that it was a copy of the testimony he gave before Mr. Zevely, and until some proof is made, it has no place in the record, and it is not competent evidence.

By Mr. MAYNARD.—You have offered it as an exhibit in the case, and it has been identified.

(Testimony of Chauncey L. Griswold.)

Q. You may look at that, Mr. Griswold, and I will ask you as to whether or not you have any correction to make to the answers that you gave Mr. Walsh when he called your attention to this paper, exhibit 368, as to whether you believed it was the testimony that you gave before Mr. Zevely, except that part that was cut out of it?

A. Well, I believe that it is. I have every reason to believe that it is the portion of the testimony that I gave before Mr. Zevely.

By Mr. WALSH.—Well, we object to its introduction in evidence, for the reason that it is a self-serving declaration, and we object to it except in so far as it is such.

Q. Now, you started to say something, and you were interrupted by Mr. Walsh, in regard to the question that he called your attention? Did you ever make any agreement with any person, that Mr. Cobban would take that land at that price? And your answer was: "I never did. The understanding was that Mr. Cobban was to take the land. This was Mr. Cobban's instructions to me." Now what explanation do you desire to add to that, if anything? You started at the time that you were interrupted?

A. In connection with that I desire to say this; that there was a great deal of testimony being taken, and which I overheard, and I was having a great deal of talk with Mr. Zevely in regard to papers and documents. In giving that answer to the questions that he asked, I inferred that he meant a written instrument. I should

(Testimony of Chauncey L. Griswold.)

have answered it altogether different if I had known that he didn't mean a written instrument.

Q. That is, the instructions were not given to you in a written instrument, is that what you said? What is your answer there? A. No, sir.

Q. Well, the question is, was this answer true: "I never did, the understanding was that Mr. Cobban was to take the land." Was that Mr. Cobban's instruction to you, did you receive such instruction?

By Mr. WALSH.—We object to that upon the ground that it is leading.

A. I surely did, and imparted those instructions to the different entrymen and entrywomen with whom I had to deal.

Q. Then as I understand you, the fact is, in regard to these instructions, just what Mr. Griswold, as to the purchase. I just want to have it clear in my own mind, that is all?

A. That I gave the different entrymen and entrywomen?

Q. No, as to the purchase of these lands that you were to communicate the fact to these people, and then Mr. Cobban was to make the purchase?

By Mr. BICKFORD.—We object to that, in the first place, because it is not proper redirect examination of the witness, and it is not proper rebuttal testimony, the matter having been gone into by the witness upon his examination in chief on behalf of the complainant,

(Testimony of Chauncey L. Griswold.)

time and time again, and it is merely encumbering the record to go over it again.

A. In all instances there were—

By Mr. WALSH.—What is the purpose of this? What is the use of going over it so many times?

By Mr. MAYNARD.—I am just bringing it up so that I can have it clear in my mind.

(Witness continuing.) There were several times in several cases wherein Mr. Cobban gave me a prepared deed, and so much money to pay to the entrymen and entrywomen upon their executing a deed to him, and in other cases Mr. Cobban would direct me to go on to the entry-people and offer so much money for his claim, or for his land and the timber.

Q. And you did so?

A. I would go and do so, and if he accepted the offer, and the timber was satisfactory, and the claim was proved up on, the land would be transferred right then and there.

Q. Outside of these particular cases, what did you do after you had had your dealings with the entrymen or entrywomen as to whether or not you would turn them over to Mr. Cobban?

A. Why, I usually turned them over to Mr. Cobban. I had no authority to make deeds, or to pay them any money, except in a few specific instances.

(Testimony of Chauncey L. Griswold.)

Recross-examination.

(By Mr. WALSH.)

Q. Mr. Griswold, we have finally got back to this prepared deed proposition, that you told us a moment ago never existed. I wish you would tell us in what cases you did prepare deeds—you have prepared deeds for Mr. Cobban?

A. In the case of Charles Cloutier, and John Gilles.

Q. Where were those deeds prepared?

A. In Ovando, I believe. They were handed to me in Ovando; whether they were prepared there or not I don't know.

Q. What other cases?

A. I don't know that I can recall any just now.

Q. That is all you know about it, is it?

A. That is all I can recall.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Let me refresh your recollection in regard to some of the witnesses, the Watsons for instance. How about their deed?

A. Well, those deeds were prepared and handed to me, too. They escape my memory. I never did have them in my possession, but a very short time. I believe the deeds were handed to me in Mr. Collins' land office.

Q. Mr. Collins' land office?

(Testimony of Chauncey L. Griswold.)

A. I think so, and I took the deed, and these parties, Mr. and Mrs. Watson, up to Mr. Reece's office, where the deeds were executed, and retained them, until they got to the hotel, that is, they retained them and at that time I paid them a hundred dollars, and received the deeds from them, and I turned the deeds over to Mr. Cobban.

Q. Where did you take these people to have their deeds executed?

A. Why, to Frank Reece's office.

Q. What is that?

A. To Frank Reece's office. I think it is in the Pittsburgh Block. My recollection is that it is immediately over the Collins' land office.

Q. Who were they? A. Who were the people?

Q. Yes, who were the people that executed the deeds?

A. Marion B. Watson, and Katie Watson, his wife, and Harriet Watson, his mother.

Q. And which one of the Dodds?

A. I don't know that I took any of the Dodds up there. I don't recollect that there was any of the Dodds along on that trip.

Q. Did you present any of the deeds to any of the Dodds for execution?

A. Not to the best of my recollection.

Q. Speaking of the Gilles and Cloutier matter. It was out of this $2,700.00 that you got up at Ovando

(Testimony of Chauncey L. Griswold.)

that you paid for these two entries, as I understand you?

By Mr. MAYNARD.—We object to that question simply because the same question been asked by counsel more than once during this cross-examination, and the whole subject matter has been thoroughly gone into.

A. Yes, sir.

Q. Shows that $2,700.00 on this bill of particulars? Can you show it to us? A. I couldn't do it.

Q. It isn't there, is it?

A. No, sir. You will find that $2,700.00 on the itemized bill which is one of the exhibits in the case.

By Mr. MAYNARD.—They will find it in the statement they withhold, won't they, Mr. Griswold?

By the WITNESS.—Yes, sir.

By the EXAMINER.—Counsel for the defendant is examining the witness now.

By Mr. WALSH.—Yes, I have got this witness now.

Q. You told us, I believe, that this bill of particulars purports on the one side to give what the claims and demands are that you made at the time of the institution of this suit against Mr. Cobban, and on the other side the money that was paid you?

A. Yes, sir, as far as it is in my power, and in the power of my attorneys to figure it out.

(Testimony of Chauncey L. Griswold.)

Q. And you were not at that time able to figure out the $2,700.00 that he gave you at Ovando?

A. The $2,700.00 is already accounted for as an exhibit in this case.

Q. Why didn't you put it in this particular statement?

A. I couldn't tell you. I have no reason to give. I left this matter entirely to my attorneys.

(Adjourned until 10 o'clock August 15, 1902.)

Friday, August 15th, 1902, two o'clock P. M.

The hearing was resumed pursuant to adjournment.

C. L. GRISWOLD was thereupon called to the stand for further examination.

Q. Just a word, Mr. Griswold; I called your attention this morning to the original affidavit that was made by Mr. Harrison Dodd, before Mr. Inspector Zevely at Missoula. You recall that fact, do you?

A. Yes, sir.

Q. And to your giving testimony relative to that affidavit? I show you now these affidavits and ask you to point them out, please. (Counsel hands witness several papers.)

A. Here is the affidavit of Thomas B. Bryan.

Q. Do you remember the circumstances of Mr. Bryan's giving that testimony in that affidavit?

A. I do.

Q. Will you please state the circumstances?

A. I met Mr. Bryan—

(Testimony of Chauncey L. Griswold.)

By Mr. BICKFORD.—We object to that on the ground that it is immaterial and irrelevant to the issues in this case, and not proper rebuttal testimony, it being part of the plaintiff's case in chief.

A. (Continued.) —on Main street in the city of Missoula, and asked him to go before Mr. Zevely and give this testimony. He made no objections to going, and doing the same, and did do so, and swore to it on the 21st day of April, 1901.

Q. You may state as to whether or not you were in the room at the time that they were examined by Mr. Zevely? A. I was.

Q. Did you hear the examination and the giving of the testimony? A. Yes, sir.

Q. What have you to say as to whether or not, after it was taken down by the stenographer in shorthand, and transcribed, you heard it read over to him by Mr. Zevely?

By Mr. BICKFORD.—We object to that on the ground that it is immaterial and irrevelant to the issues in this case, and not proper rebuttal testimony, it being part of the plaintiff's case in chief.

A. I don't recollect that it was read over to him by Mr. Zevely. But my recollection is that it was given to Mr. Bryan to read himself.

Q. Did you see him sign his name to the same?

A. I believe that I did.

Q. Are you familiar with his handwriting?

(Testimony of Chauncey L. Griswold.)

A. I am.

Q. Are you able to state whether or not that is his handwriting? (Counsel hands witness affidavit of Thomas Bryan.) A. I should say that it is.

Q. Proceed with the next affidavit, please.

A. The next one is the testimony of Allen Dodd.

Q. What have you to say in regard to that?

A. On my way from Clearwater to Missoula, I stopped at the home of the Dodd family, and took Mr. Allen Dodd with me to Missoula, and introduced him to Mr. Zevely, and was in the room in person when this testimony was taken; heard it all, and saw Mr. Allen Dodd sign his name to it.

Q. Proceed with the next one, please.

A. The next one is the testimony of John Murtaugh. Mr. Murtaugh was in the city of Missoula, and I don't recollect of being instrumental in getting Mr. Murtaugh before Mr. Zevely. However, I was present at the time the testimony was given, and I saw Mr. Murtaugh affix his signature to this instrument on the 19th day of April, 1901.

Q. You may go on with the next one, please.

A. The next one is the testimony of Albert Jemison, for whom I went to Clearwater at the special instance and request of Mr. Zevely, and brought Mr. Jemison before Mr. Zevely. I saw this testimony all taken down, and heard it all given, and saw Mr. Jemison affix his signature to it on the 21st day of April, 1901.

(Testimony of Chauncey L. Griswold.)

Q. You may go on with the next affidavit, Mr. Griswold.

A. The next is the testimony of myself. That was brought out by Mr. Bryan, and that is in evidence now. I believe that is all.

By Mr. MAYNARD.—I desire, if your Honor please, to offer in evidence the affidavits mentioned by the witness, Mr. Griswold, to wit, testimony of Mr. Thomas B. Bryan, Allen Dodd, John Murtaugh and Albert Jemison.

By Mr. BICKFORD.—To the introduction of which we object for the reason that the same is irrelevant and immaterial, and not responsive to any issue in this case. It is not proper rebuttal testimony, of any feature of the case, but is properly a part of the complainant's case in chief, and should have been introduced by the Government at that time, and for the further reason that from the evidence itself, it appears to have been taken ex parte at a time when neither the defendants, or anyone representing the defendant was present, to cross-examine or interrogate any of the witnesses concerning any of the matters testified to by them, and further, that it is hearsay.

Cross-examination.

(By Mr. BICKFORD.)

Q. I may ask one question. Was anybody present representing the defendant as an attorney, at the time these affidavits, or any of them, were taken?

(Testimony of Chauncey L. Griswold.)

A. No, sir, I believe not.

Q. No one was there, in person, or by attorney, or a representative of any kind?

A. No, sir, I believe not.

CHAUNCEY L. GRISWOLD.

Subscribed and sworn to before me this 16th day of August, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

By Mr. MAYNARD.—That finishes the testimony, if your Honor please, that we have to offer until the question of law is disposed of by his Honor, Judge Knowles. I shall endeavor to bring up next week, when the court is in session, the question of law that is presented by the refusal of counsel in this case to obey the order to produce the documents that we have demanded, both by written notice, and a subpoena duces tecum, of you, that you produced; and we shall ask the court to order the defendant, and the counsel, and R. M. Cobban, to produce them before your Honor. And further, when that is done, that we shall have a reasonable length of time in which to further examine Mr. Cobban, and such other witnesses, as the reasonable terms of the order it shall be permitted us to do.

By Mr. BICKFORD.—Well, as I understand it, you close your rebuttal testimony, now, with that exception?

By Mr. MAYNARD.—Yes, except such rebuttal proof

as we may make or be able to make after the motion shall be disposed of.

By Mr. BICKFORD.—Well, that is all. That is to say, that your further testimony will be confined to such testimony as is allowed to be made by the order of the court; and such witnesses as may be allowed by the order of the court subsequent to this time.

By Mr. MAYNARD.—Yes.

By the EXAMINER.—Then let it appear that the hearing is adjourned until Monday the first day of September, 1902, at this office, subject to the order of the court, or the Judge of this court in which this case is pending.

By Mr. MAYNARD.—Of course, I desire to have it affirmatively appear of record that I reserve the right, and privilege to produce and examine such of the entrymen and entrywomen mentioned in the bill of complaint that we have not been able to secure under and by virtue of the stipulation, which, as I claim, I have a right to do.

By Mr. WALSH.—It may as well be understood that we will resist at all times, the claim of the right on the part of counsel for the Government to examine any of the entrymen or entrywomen upon the ground that the time within which those witnesses were to be examined has long since expired, and it has certainly now expired.

By the EXAMINER.—At the present time I think the defendant is right in his contention. I should not allow

(Testimony of Thomas B. Bryan.)

any more witnesses to be examined hereafter unless otherwise ordered and adjudged by the Court.

The testimony of the witness, THOMAS B. BRYAN, given before Inspector Zevely, as stated in the testimony of Mr. Griswold is as follows:

Mr. THOMAS B. BRYAN, called, sworn, testifies as follows:

Q. What is your postoffice address?

A. Clearwater, Mont.

Q. Mr. Bryan, have you, yourself, made entry to land in Montana, under what is known as the Timber and Stone Act?

A. I did four years ago, but not in this case.

Q. Do you know any persons who have?

A. I think I do; yes, sir.

Q. Who are they?

A. My wife, Harriett Bryan, took up a claim, the S. half of the S. E. q. of the S. half of the S. W. q. of sec. 26, tp. 15, rge. 15.

Q. When did she take it up?

A. August 4th, 1899.

Q. Was it in the summer or fall of 1899?

A. It will be two years ago in August.

Q. Your wife lives in the Clearwater, did anyone come to see her about taking up a claim?

A. She seen Mr. Cobban and was talking with Mr. Griswold. There was also three more taken up by L. T. Bryan, Edgar Lehman and Bell Bryan.

(Testimony of Thomas B. Bryan.)

Q. Did you have a conversation with Mr. Cobban about these four entries?

A. I had a talk with him; yes, sir. It was just this way; after the filing on this timber he was to support them in proving up on it. They was to file on the land, and he was to furnish the means to prove up on the timber claims, which I suppose he did.

Q. Did he for your wife?

A. Yes, sir, he paid her money for proving up.

Q. Did your wife get a deed for it?

A. It seems to me she got a patent and she turned it over to Mr. Cobban. She made a deed to Mr. Cobban, but I did not have any interest in it. What is true with my wife is also true with all the others. I never looked after them any further than I helped them to locate the land as is required, but after that I do not know what was done.

Q. Did you go onto the land yourself?

A. I made one trip there with Deane. I went to Helena to make final proof, but I did not see any money paid there to them.

Q. In Cobban's conversation with you, did he say what he would pay them?

A. Yes, there was an understanding, of course, that he was to pay the expenses; he then was to give them $600.00 for the four claims, outside of all expenses. I asked him what he would give for the four claims, and he to pay the expenses, and he said he would give $100.00 apiece and

(Testimony of Thomas B. Bryan.)

pay all expenses; and I then said, you will give $600.00 if I will pay all expenses; and he said yes.

Q. You did not have to pay for the land?

A. No, I suppose he was to pay for the land, that was my understanding at that time that we were to get $100.00 for the land and fifty dollars for expenses, and I understand that was carried out that way. My wife got $150.00 less the expense of making the final proof, which was the understanding. She realized from it $100.00, and Mr. Cobban was to furnish the money.

Q. Who paid for the land at the Helena landoffice?

A. There was a man by the name of J. B. Catlin was there when we made the final proof, he went to the land office with us.

Q. Did they get any papers at all or any receipt when the money was paid?

A. I could not say if they ever got any or not; I did not notice.

Q. Do you know anything about who paid for the advertising of this land?

A. She paid for it, that had to come out of the $200.00.

Q. What was your occupation at that time?

A. I was a laboring man at that time working for the Northern Pacific as bridge carpenter. At the present time I am running a hotel in the Clearwater.

(Signed) THOS. B. BRYAN.

April 21, 1901.

Thos. B. Bryan was sworn by me before this statement was made, and the erasures and interpolations were made

(Testimony of John Murtaugh.)

before he signed, and the same was signed by him in my presence.

(Signed) J. W. ZEVELY,
Special Inspector.

The testimony of the witness, JOHN MURTAUGH, given before Inspector Zevely, as stated in the testimony of Mr. Griswold, is as follows:

Exhibit "D."

JOHN MURTAUGH, called, sworn, testifies as follows:

Q. Where do you live, Mr. Murtaugh?

A. Missoula is my postoffice.

Q. What business are you in, Mr. Murtaugh?

A. Well, I am a common laborer, a lumberman, and work in lumber camps.

Q. How old are you?

A. I don't know, but the last time I registered, I made it 38 years.

Q. Have you any family?

A. No, I have no family.

Q. Did you ever enter any land at the land office, in Missoula; under the Timber and Stone Act?

A. Yes, sir.

Q. When did you make that entry, do you remember?

A. Well, I think it was the 14th of September or December, but I do not know exactly the day of the month.

Q. What year was it?

A. It was in the fall of 1899.

Q. Was it the north half of the northwest quarter and

(Testimony of John Murtaugh.)

the S. E. quarter of the N. W. quarter, and the N. E. quarter of the S. W. quarter, all in sec. 26, township 15 north, range 16 west? A. Yes.

Q. How much money did you pay on this land?

A. I did not pay anything.

Q. Who did pay the money for you?

A. It was supposed to be paid by Cobban and Dinsmore.

Q. They paid you for this?

A. I do not know one man from the other, it was a smooth-faced man in there? It was Mr. Cobban.

Q. How old a man is he?

A. I should judge he is fifty or sixty years old.

Q. How did he happen to pay that money for you, tell the facts about it?

A. Well, this fellow that put me on to this claim—Albert Jameson—he put me on to the boundaries. I came down and filed on it, and this man he gave me ten dollars to file on it; this man Catlin.

Q. Where did you meet Catlin?

A. In his office, in Cobban and Jameson's office, in the Higgins Bank Block.

Q. Could you identify him?

A. Yes, sure I could, I would know him the minute I seen him; I think it was Catlin.

Q. How did you happen to go there, did Jameson instruct you to go there? A. Yes, sir.

Q. Who went with you to the land office, did Jameson go with you?

(Testimony of John Murtaugh.)

A. Catlin gave me ten dollars for expenses, and after I filed, we went to the land office and he came in and told the clerk he would straighten all accounts.

Q. What clerk was that?

A. I think it was Hershey.

Q. Did he wear glasses? A. I don't remember.

Q. What did you do then?

A. I filed on the land, they got the papers and I went up there and got my money from the office. I got $100.00.

Q. You got $100.00 besides this $10.00?

A. Yes, sir, I got the ten dollars immediately after I filed; I did not pay any money at the land office. I put the money in my pocket and blowed it in for whisky.

Q. After you filed what else did you do?

A. I then proved up on it.

Q. Who were your witnesses? A. I don't know.

Q. Who got your witnesses?

A. Jameson, he did the whole thing.

Q. How long did you stay on this land?

A. I stayed about one hour.

Q. Did you ever cut any timber on it?

A. No, sir, I never cut any timber off of it.

Q. When you made your final proof, what happened?

A. The witnesses I had I brought in and made the necessary affidavit.

Q. Who paid the money for the land, did you pay it?

A. I never paid a cent.

Q. Did anyone pay it?

(Testimony of John Murtaugh.)

A. No, sir. They said Mr. Cobban was to straighten all accounts.

Q. Did they give you a receipt?

A. No, sir.

Q. What did you get from the land office?

A. I did not get anything.

Q. Did you get a patent? A. No, sir.

Q. In whose name was the patent made?

A. To this man. I suppose Cobban, this is the man I filed for.

Q. Did you give a deed?

A. Yes, when I got the $100.00.

Q. You came in and made final proof and went up to office of Cobban & Dinsmore and got $100.00; what happened then?

A. I signed a deed or something, I don't just remember what it was, I signed some paper and he gave me a check for $100.00.

Q. Who gave you the check?

A. Mr. Cobban gave me the check, he was a smooth faced man.

Q. Mr. Cobban gave you a check for $100.00? On what bank?

A. Yes, it was on the first National. I went into the Missoula Mercantile Co. store to get some clothes and he told me I had better get to the bank and get my check cashed.

Q. When Jameson first came to see you about this

(Testimony of John Murtaugh.)

entry, what did he say to you, what proposition did he make to you? A. I went to see him.

Q. How did you happen to do that?

A. Well, he was paying every man for looking up claims down there.

Q. Who else did he pay, or can you recollect any names of any other parties?

A. I don't remember.

Q. Did you talk with any of them about it?

A. No, sir, I did not.

Q. How do you know he was paying them for looking up these claims?

A. I got it from Johnnie Gillis.

Q. Where does he live? A. He is dead.

Q. You then went to Jameson? A. Yes, sir.

Q. What was the conversation you had with Jameson?

A. I went down there to ask him if he was putting any men on claims now and he asked if I wanted to go look for some claims and I said yes and we went up and looked at some claims and he said to me, you come down to-morrow as I am going to Missoula to-morrow and if you want to file on it all right and we will pay you if you will file on it.

Q. Did he say what he would give you?

A. He said you will get $10.00 for expenses and $100.00 for the claim.

Q. What else? A. That is all I know.

(Testimony of John Murtaugh.)

Q. Did you ever have any talk with Mr. Cobban about claims? A. No, sir, I did not.

Q. What else did he say to you when he paid you this check?

A. He said, we owe you $100.00 and I said yes, and he said, that is the bargain you made with Jamison.

(Signed) JOHN MURTAUGH.

Subscribed and sworn to before me this 19th day of April, 1901.

(Signed) J. W. ZEVELY,
Special Inspector.

The testimony of the witness, ALLEN DODD, given before Inspector Zevely, as stated in the testimony of Mr. Griswold, is as follows:

Exhibit "E."

Mr. ALLEN DODD, called, sworn, testifies as follows:

Q. Where do you live?

A. My postoffice address is Bonner.

Q. What is your occupation?

A. I am a laborer.

Q. Have you any family?

A. No, sir, I am a bachelor.

Q. You a brother of Harrison Dodd?

A. Yes, sir.

Q. Mr. Dodd, did you under the Timber and Stone Act, make filing and final proof on the S. E. q. of Sec. 30, tp. 15, rge. 13? A. Yes, sir.

(Testimony of Allen Dodd.)

Q. Who was with you?

A. My brother, Winfield Dodd, was with me when I made the filing.

Q. How did you happen to do this, tell me all about it.

A. I made the entry in my name, but I made it for R. M. Cobban.

Q. Did you have any agreement about it before making entry, did you talk to Mr. Griswold about it, before making entry?

A. I had a talk with certain parties and they said there was a chance for certain persons to use their right and sell again.

Q. Who did you have conversation with?

A. As near as I can remember it was with Mr. Griswold.

Q. Did you go and locate this land?

A. Yes, sir.

Q. What did you do then, did you see, Mr. Cobban?

A. Yes, sir, after I located the land I came down to see Mr. Cobban, myself and brother Winfield came to see Cobban and we seen him in his office.

A. Anyone else in the office? A. Yes, sir.

Q. Who else was there? A. Mr. J. B. Catlin.

Q. What was the conversation there?

A. We brought the record of land there and Mr. Catlin wrote out the final papers, then Mr. Cobban he furnished us money to go to Helena.

(Testimony of Allen Dodd.)

Q. How much money did he give at that time for expenses?

A. He gave us—me twenty-nine dollars.

Q. Did he give you a railroad ticket?

A. No, sir, I think he only gave us twenty-nine dollars.

Q. What was the understanding upon which he gave you this twenty-nine dollars to go and make this filing?

A. He gave it to us to go to Helena for expenses, then when we proved up sixty days later he was to give us $100.00 apiece and I was to make deed to him.

Q. You were to make a deed transferring your right?

A. Yes, sir.

Q. Did anyone go with you?

A. Yes, my brother and Marion Watson.

Q. Who is he?

A. He is a man that was working for Mr. Cobban.

Q. How is he related to you?

A. One of my brothers married his sister.

Q. Did you pay any money when you made your final proof? A. No, sir.

Q. Did you get final receipt? A. No, sir.

Q. You did not get any papers at all and did not pay any money? A. No, sir.

Q. Who did pay the money?

A. I do not know.

Q. Did Marion Watson pay the money?

A. I did not see it paid, he gave us a deed to look over and then took it and I signed the deed.

(Testimony of Allen Dodd.)

Q. And did you make the final proof?

A. Yes, sir.

Q. Who was present when you signed the deed?

A. I do not remember if my brother and Watson was there or not, they were all strangers.

Q. You did not know what you was signing?

A. No, sir, I did not, except it was a deed to this land, to come right out with the truth, I did not know what I was signing.

Q. Do you live in the Clearwater?

A. I live about seven miles from Bonner, Mont.

Q. Did anyone else in that neighborhood do this same thing for Cobban?

A. Yes, sir, quite a number of them of them on the same condition that I did.

Q. It was the talk in that community?

A. Yes, sir, I guess so.

Q. Did you print any advertisement after you made your final proof?

A. No,sir , I did not, I know nothing about it.

Q. Did you furnish any names of witnesses when you made your filing?

A. I did not and if any advertisement was published touching that land, I know nothing about it and had nothing to do with it.

Q. Did you ever see any advertisement?

A. I seen it before I made my final proof in the "Garnett" News but I did not put it there.

Q. How long was you on this land?

(Testimony of Allen Dodd.)

A. About one hour or more, but never after I made examination of land.

Q. Did you pay the "Garnett News" for publishing that advertisement? A. No, sir.

(Signed) ALLEN DODD,
April 21, 1901.

Allen Dodd was sworn by me before this statement was made and the erasures and interpolations were made before he signed, and the same was signed by him in my presence.

(Signed) J. W. ZEVELY,
Special Inspector.

The testimony of ALBERT JEMISON, given before Inspector Zevely, as stated in the testimony of Mr. Griswold, is as follows:

Exhibit "H".

ALBERT JEMISON, called, sworn, testifies as follows:

Q. Where do you live?

A. On the Blackfoot river, my postoffice is Clearwater, Montana.

Q. What is your occupation? A. A farmer.

Q. Have you a family?

A. No, sir, I am a bachelor.

Q. Who is your brother?

A. Abraham Jemison.

Q. Under what is known as the Timber and Stone

(Testimony of Albert Jemison.)

Act, you filed upon and made final proof of the S. W. q. of Sec. 10, tp. 14, rge. 15? A. Yes, sir.

Q. Tell me the circumstances, the whole history of the case, how you happened to do it and all about it.

A. The first start of it was when Mr. Griswold was located up the Clearwater, I believe it was on Sunday that I went to Mr. Griswold and told him that I wanted to get some claims and he told me to go and look them up and I went and looked them up and at that time I located this one on the west half of section 10 and my father took the northwest quarter of section 10, tp. 14, R. 15, Griswold gave us a piece of paper with writing on it, and we then came to Missoula and gave it to J. B. Catlin.

Q. Did you read the paper? A. Yes, sir.

Q. Who did you take the paper to?

A. I think I gave it to Mr. Catlin.

Q. Did Mr. Catlin go with you to the land office?

A. He made out the first papers for us and went with us to the land office and was with us when we filed.

Q. He give you anything for expenses?

A. No, sir.

Q. What then?

A. We went to him with our final proof in sixty days, me and father, we came to the office of Cobban and then went down and made final proof and I think Mr. Catlin was with us when we proved up, but I do not remember who the witnesses were.

(Testimony of Albert Jemison.)

Q. Did you pay any money when you filed and when you made final proof? A. No, sir.

Q. Did you get receipt when you made final proof?

A. No, sir, we did not get anything at any time, we were taken to Cobban's office and he wrote out deed, we signed it up, I signed one and father signed one and he then paid us $115.00 each.

Q. Did Mr. Cobban give you that money himself?

A. Yes, sir, I know him well and he gave us the $115.00. Well,I should say rather that he took $45.00 dollars out from my money as there was an order against me for that amount, and gave the balance to me.

Q. Did you do any advertising after you did this?

A. They attended to that themselves. I gave them names of witnesses, but Cobban gave me the money to pay for the advertising in the Missoulian paper here.

Q. Is your father Jacob F. Jemison?

A. Yes, sir.

Q. Is your mother living? A. Yes, sir.

Q. How long was you on this land that you and your father entered?

A. I was on it nearly half a day.

Q. You got it for a speculation, you filed and got the land to get as much money out of it as you could?

A. Yes, sir. I never had any conversation with Mr. Griswold prior to the time I entered the land for my father and myself, with reference to any payment that was to be made to me by Mr. Cobban.

(Testimony of Albert Jemison.)

Q. When did you first have a talk with Mr. Griswold about locating land?

A. About eight or ten days before I filed for myself.

Q. What was the nature of that conversation?

A. I spoke to him about claims and he said to go and look up one.

Q. Did you ever have any other conversation about claims?

A. No, sir, I worked for Mr. Griswold for a while locating claims.

Q. What claims did you locate?

A. I located G. P. Jemison on the S. E. q. of Sec. 4, tp. 14, rge. 15; J. C. Gillman, the W. half of the S. W. q. and the N. E. q. of the S. W. and the S. W. q. of the N. W. q. of Sec. 4, tp. 14, rge. 15; Emma Dildine the E. half of the S. E. q. and the S. W. q. of the S. E. q. and the S. E. q. of the S. W. q. of Sec. 12, tp. 14, rge. 15; George Dildine, W. half of the N. W. q., N. half of the S. W. q., Sec. 8, tp. 14, rge. 15; Matilda Eddy, S. E. q. of the N. E. q. and the N. half of the S. E. q., and the S. E. q. of the S. E. q. of Sec. 14, tp. 14, rge. 15; Sarah Yarger, W. half of the N. W. q. and the W. half of the S. W. q. of Sec. 12, tp. 14, rge. 15; Thos. Roll, N. E. q. of Sec. 10, tp. 14, rge. 16; A. J. Jemison, E. half of the N. W. q. and the E. half of the S. W. q. of Sec. 10, tp. 14, rge. 16; James W. Wheaton, S. W. q. of Sec. 4, tp. 14, rge. 16; Mary Eddy, W. half of the N. W. q. and the W. half of the S. W. q. of Sec. 10, tp. 14, rge. 16. Herbert Eddy, E. half of the N. E. q. and the E. half of

(Testimony of Albert Jemison.)

the S. E. q. Sec. 28, tp. 15, rge. 16. Eveline Jemison, W. half of the S. W. q. the W. half of the N. W. q. of Sec. 34, tp. 14, rge. 16; James Mize, E. half of the N. W. q. and the E. half of the S. W. q. of Sec. 34, tp. 15, rge. 16; Laura Roll, W. half of the S. E. q. and the South half of the S. W. q. of Sec. 26, tp. 15, rge. 16; C. H. Jemison, S. half of the S. W. q. and the N. E. q. of the S. W. q. and the S. E. q. of the N. W. q. of Sec. 28, tp. 15, rge. 16; Calvin Yarger, W. half of the N. E. q. and the W. half of the S. E. q. of Sec. 28, tp. 15, rge. 16; Zora Jemison, W. half of the N. E. q. and the W. half of the S. E. q., of Sec. 34, tp. 15, rge. 16; Jennie Mize, E. half of the N. E. q. and the E. half of the S. E. q. of Sec. 34, tp. 15, rge. 16; J. G. Hendrix, W. half of the N. W. q. and the W. half of the S. W. q. of Sec. 32, tp. 14, rge. 15; Robt. Starkey and Mary Starkey, W. half of the S. W. q. and the N. E. q. of the S. W. q. and the S. W. q. of the N. W. q. of the S. W. q. of Sec. 22, and the S. half of the N. W. q. and the N. half of the S. E. q. of Sec. 32, tp. 15, rge. 16. Irene Hendrix, I have not got her description. Albert Ehle, N. W. q. of Sec. 32, tp. 15, rge. 16; J. B. Reeve and E. A. Reeve, S. half of the N. E. q. and the W. half of the S. E. q. Sec. 4, tp. 14, rge. 16 and the S. W. q. of Sec. 32, tp. 15, rge. 16. John Murtaugh, N. half of the N. W. q. the S. E. q. of the N. W. q. and the N. E. q. of the S. W. q. Sec. 26, tp. 15, rge. 16. W. J. Eddy, S. half of the S. E. q. and the S. half of the S. W. q. of Sec. 8, tp. 14, rge. 15. L. I. Gillman, E. half of the

(Testimony of Albert Jemison.)

N. E. q. and the S. W. q. of the N. E. q. and the N. W. q. of the S. W q. Sec. 8, tp. 14, rge. 15, and R. M. Jemison, S. half of the S. W. q. and the S. half of the S. E. q. of Sec. 6, tp. 14, rge. 15.

Q. What do you mean by locating for these people?

A. I went onto the land, took the people onto it, gave them descriptions of the land, and sent them to R. M. Cobban at Missoula.

Q. Did you understand from Mr. Cobban that they were to advertise after they went to him?

A. I knew they were to take these claims and prove up on them.

Q. What did you tell them?

A. I told them to go take the claims, prove up on them and sell them to Mr. Cobban and I told them $120 was in it clear of all expenses.

Q. Who told you that? A. Mr. Cobban.

Q. How much did Mr. Griswold pay you for doing this work?

A. He paid me ten dollars for each location.

Q. In addition to these locations you made for Mr. Griswold, did you also make some further locations for Mr. Cobban, for which he himself paid you?

A. I did three times as much for Mr. Cobban as I did for Mr. Griswold.

Q. How much did he pay you for each one?

A. He paid me an average of $35.00 per claim, all except two claims and for these he paid me $12.50 each.

(Testimony of Albert Jemison.)

I told these people that Mr. Cobban would buy them for $120.00 above all expenses and they were to make deed to Mr. Cobban right away.

Q. Can you remember the names of the locations you made for Mr. Cobban?

A. I located for Mr. Cobban, E. M. Hardy and J. H. Hardy, and Simon F. Cobban, (latter an uncle of R. M. Cobban) Norman Newell, and Wallace Miller and O. C. Clark, a preacher. W. Dorsett and W. E. Hubert, my brother located for Cobban on my recommendation for these men, there was others also but I cannot remember them now.

Q. When you located for these men what instructions did you give them?

A. I gave them description of the land on paper with Cobban and Dinsmore's office on it and I signed my name to it and they took them to Cobban and Dinsmore's office and Catlin would go with them to the land office to make filing and he would make advertisement and then when the time came for final proof they would come to the same office and usually Catlin or Pond would go with them to the land office and there make final proof and receipts would be either given to Catlin or Pond and the persons who made the final proof would go back to the office and be paid $100.00 to $150.00/100; that was the usual manner of doing it and the purpose of entering these lands was for the benefit of Cobban.

Q. What was your understanding with Mr. Cobban?

A. When I took my claim to him I had no agreement

(Testimony of Albert Jemison.)

until I went to prove up on it. When I did go to him with my claim, I had the money to put up myself for it if he would not take it but Mr. Cobban was here the day I made final proof and gave me $400.00 and gave my father $400.00 to go to the land office to make final proof and then I went back to his office but I do not know who got the final receipt.

Q. When you went to the land office what did they say to you?

A. They did not say anything to me. We did our business with Mr. Hershey and J. Q. Ramph, if Hershey was not there Ramph did it.

Q. Was there any understanding that Hershey and Ramph understood what was going on?

A. Well, no, we did not have any words or talk about it, they laughed and joked about it but did not talk about it but my idea was that they knew what was going on my feeling was that the officers there would do their part if the other parties would do theirs.

Q. Did you have a talk with Cobban about that?

A. All the talk I had with Cobban was about the location, but the understanding was that they understood at the land office what was going on, we would go four or five together and locate and we would be witnesses for each other.

Q. Do you know Catlin?

A. Yes, for a long time.

Q. Do you know whether he is related to Hershey?

A. Hershey is his son in law, he told me himself.

(Testimony of Albert Jemison.)

Q. Do you know L. T. Catlin?

A. Yes, sir, he is a nephew and works in the land office.

Q. Do you know anything about entry he was there?

A. No, sir, I do not know anything about that.

Q. Was Cobban ever present when any locations were made?

A. Yes, sir, he was present when Hardy and Mrs. Hardy's claim was located, he was right there also when Simon F. Cobban's claim was located I was with him there.

Q. What relation is Hardy to Cobban?

A. Cobban is son in law of Mr. and Mrs. Hardy.

Q. Do you know where Hardy resides?

A Back east somewhere.

Q. How long was he here?

A. About three months or more, I do not know how long; I located for him in August, I think.

(Signed) ALBERT JEMISON.

April 21, 1901.

Albert Jemison was sworn by me before this statement was made and the erasures and interpolations were made before he signed and the same was signed by him in my presence.

(Signed) J. W. ZEVELY,

Special Inspector.

I hereby certify that the foregoing testimony of the witnesses, Thomas B. Bryan, John Murtaugh, Allen

(Testimony of Lucian W. Heath.)

Dodd and Albert Jemison, has been correctly copied and are true copies of the original.

HENRY N. BLAKE,
Examiner in Chancery.

LUCIAN W. HEATH, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Heath, do you reside in this city?

A. I do.

Q. Were you a notary public for Lewis & Clarke County on or about the 16th day of November, 1899?

A. I was.

Q. I ask you to examine exhibits 109 and 119½, being deeds of Winfield Dodd and Allen Dodd to R. M. Cobban. You may state as to whether or not you are the individual whose name appears there as the officer before whom the acknowledgment was taken.

A. Yes, sir, I am.

Q. What connection with those deeds did you have, other than that?

A. Not any, as far as my recollection goes.

Q. Have you a book in which entries are made relative to your notarial business?

A. I usually keep a record of them.

Q. Turn to that and see if there are entries there which were made at the time relative to this transaction.

A. November 16th—shall I read them?

(Testimony of Lucian W. Heath.)

Q. If you please.

A. November 16th, 1899, acknowledgment of Winfield Dodd on deed to R. M. Cobban. November 16th, acknowledgment of Allen Dodd on deed to R. M. Cobban. I have those records

Cross-examination.

(By Mr. WALSH.)

Q. You don't recall, as I understand you, Mr. Heath, anything more about the transaction than the mere matter of taking the acknowledgment?

A. No, sir, I do not.

Q. Now, do you recall that fact independent of your memorandum and what you see on the deed?

A. Well, sir, I don't think I would. Mr. Cobban was in our office frequently, and I have taken quite a number of acknowledgments for him and from people that he has brought in. But as to these Dodds, I don't recall this particular instance at all except on account of the record here.

Q. So all you testified to is simply what appears here?

A. Yes, sir; I have no definite recollection of this particular matter that I could swear to, except as these records show.

Q. You do not know that you did not draw this deed yourself?

A. I am very certain that I have not drawn any deeds for Mr. Cobban in the office; I am certain that the deeds

(Testimony of Lucian W. Heath.)

that were brought in were prepared; that is my recollection of the matter.

Q. How many deeds were brought in?

A. At this time there seems to have been only two; I haven't found any others on my record, though, I think I have taken several acknowledgments for Mr. Cobban at different times, of people he brought in there. He drops in our office frequently.

Q. You have not found any record of any except these two?

A. I think I found the record of another one in here, but I did not know what was going to be required of me, and I had not looked it over particularly, but these deeds, as soon as I saw the date of them I knew where to turn in my record.

Q. The deed which I now hand you is the original of the one to which your attention has been called, isn't it?

Mr. MAYNARD.—I object to counsel showing the deed, unless the same is presented to me and marked as an exhibit and offered in evidence in the case. Having refused to produce, upon demand, the original deeds, it is not competent now for him to use the deeds, when secondary evidence has been obliged to be used.

A. Why this deed was certainly prepared by me; it is in my handwriting. It is a surprise. I did not intend to testify wrongly in the matter. I testified to the best of my belief that those deeds were not prepared by me, which seems to be wrong.

Q. Probably you were in error about the matter.

(Testimony of Lucian W. Heath.)

A. I certainly was. That is my handwriting, and I prepared that deed, but it was entirely outside of my recollection.

Q. So, after your recollection is refreshed from observing the original deed, you can say that you prepared the deed.

A. Let me see that again. That is certainly my handwriting, but as far as recollection goes in the matter, I don't remember one single thing about it. I certainly prepared that deed. My recollection was always that Mr. Cobban brought in his deeds when anybody came in there.

Mr. MAYNARD.—Where is the other deed, the original deed of Allen Dodd?

Mr. BICKFORD.—I haven't the slightest idea.

Mr. WALSH.—We just happened to have this convenient.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Do you remember anything about the facts and circumstances of drawing this deed?

A. No, sir, I certainly do not remember one single thing. I was quite sure that I did not draw it. But I am drawing deeds and doing notary work right along in connection with other work, and I had no recollection of the matter at all, more than my record shows here, and that deed is prepared in my own writing, and there is not one deed in a hundred that I prepare. My stenog-

(Testimony of J. P. Woolman.)

rapher usually does that, and why I did that I don't know, but it is my deed, prepared in my own handwriting.

L. W. HEATH.

Subscribed and sworn to before me this —— day of August, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

J. P. WOOLMAN, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Woolman, you are the marshal of this district, are you not?

A. I am the United States Marshal of this district, yes, sir.

Q. Please state what efforts you and your office have made to secure the attendance here of Allen Dodd and other witnesses that were subpoenaed from Idaho.

A. Harrison Dodd, you mean?

Q. Harrison Dodd, yes, sir.

Mr. WALSH.—We object to this because it is not rebuttal and because it is immaterial and irrelevant.

A. I received a telegram from Harrison Dodd from Mackay, Idaho, the 11th day of August, as follows: "United States Marshal, Helena, Montana. We have no money, United States versus Clark. Harrison Dodd."

(Testimony of J. P. Woolman.)

I reported this matter to Mr. Maynard, and at his request I had the agent here of the Montana Central to wire the agent of the Oregon Short Line at Butte, Mr. Wilson, to wire the railroad agent at Mackay, that railroad transportation would be furnished to Mr. Dodd and and to any other witness that were subpoenaed to appear here and testify in this case, that this transportation will be furnished from there here, and that is all. I have heard nothing of the matter since. I have called several times upon the railway agents here, and he says he has communicated with Mr. Wilson, but has had no reply from him.

Q. Have you in your possession the original subpoena?

A. No, sir, I have in my possession these copies of the original subpoenas, that a return is made upon, signed R. Rounds, United States Marshal, by Charles J. Andrews, Deputy.

Q. What is the return?

Mr. BICKFORD.—The return to the Court will be part of the record.

Mr. MAYNARD.—I desire to read it into the record.

A. "Marshal's return. I have served this writ personally, by copy, on Harrison Dodd at Mackay, Idaho,

(Testimony of J. P. Woolman.)

this 11th day of August, 1902, R. Rounds, United States Marshal, by Charles J. Andrews, Deputy."

Q. Are the returns of the officer for any other except Harrison Dodd?

A. Yes, sir, Harrison Dodd and Lizzie Dodd.

JOSEPH P. WOOLMAN.

Subscribed and sworn to before me this 16th day of August, 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.